1673

AN

HISTORICAL DEVELOPEMENT

OF THE PRESENT

POLITICAL CONSTITUTION

OF THE

GERMANIC EMPIRE.

VOLUME II.

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1673

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TRANSLATED FROM THE GERMAN,

With NOTES, and a comparative View of the REVENUES, POPULATION, FORCES, &c. of the respective TERRITORIES, from the Statistical Tables lately published at BERLIN,

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HISTORICAL DEVELOPEMENT, &c.

BOOK VI.

Third Period of Modern Hiſtory.

FROM THE RESIGNATION OF CHARLES V. TO THE TREATY OF WESTPHALIA.

1558—1648.

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Ferdinand I. and Maximilian II. 1558—1576.

Firſt inſtance of the reſignation of a reigning Emperor—Capitulation of the Emperor and the Electoral Union renewed—Coronation of the Emperor no longer celebrated at Rome—End of the Council of Trent—Abuſes in the Catholic Church not aboliſhed—Enterprize of William of Grumbach againſt Würtzburg, and the diſturbances at Gotha—which occaſion the Aſſembly of Deputations, and general Diet.

THE acceſſion of Ferdinand I. to the Imperial throne was diſtinguiſhed by this peculiarity, that it was not, as uſual, in conſequence of the death, but A.C. 1558.

BOOK VI. of the reſignation of his predeceſſor. This was the firſt inſtance of the kind, and might ſerve to eſtabliſh a precedent for an Emperor's reſignation of his crown, without either the conſent of the Diet, or even that of the Electors; though, with reſpect to the manner of doing it, it was neceſſary to ſend a public declaration of the act, to the Electoral College, which Charles V. did by a particular embaſſy.

The capitulation which Ferdinand had already ſworn to in the year 1531, as King of the Romans, was drawn up upon the ſuppoſition that he would ſucceed to the throne upon the death of his brother; but as this ſucceſſion was not in conſequence of the death, but of the reſignation of Charles V, the Electoral College took occaſion, from this circumſtance, to propoſe another capitulation to Ferdinand, at the commencement of his reign, as Emperor; though, ſince that time, it has never been uſual for a King of the Romans to take any other oaths, at his acceſſion to the throne, than thoſe preſcribed at his firſt election. The grand object now was, that the religious peace, which had been concluded ſince that period, might be expreſsly inſerted in the Emperor's capitulation. The ſame thing happened with the Electoral Union, which was renewed on this occaſion, with ſeveral additions, as it has remained in force to the preſent day.

The diſſatisfaction which the Pope expreſſed at the conduct of Ferdinand, for concluding the religious

gious peace as King of the Romans, and the remonſtrance which he made againſt the reſignation of Charles V. becauſe, according to his opinion, the crown ought to have been reſigned into his hands, were attended with bad conſequences to the Papal Chair; as Ferdinand neglected receiving the Imperial coronation at Rome, which was the uſual cuſtom, and which even Charles V. had done before him: in conſequence of which, that ceremony has never ſince been repeated. In other reſpects, no alteration of any conſequence was made in the conſtitution of Germany, either during this reign, or in the ſucceeding one of Maximilian II. whom his father Ferdinand procured to be elected King of the Romans, and who afterwards procured the election in favour of his ſon Rudolphus II.

Such was the end of the Council of Trent, which was diſſolved in Ferdinand's reign, that, inſtead of the expectation of a union of religions being gratified, the wall of partition between the Catholic and Proteſtant Churches was rendered by its decrees much ſtronger than it was before. Many poſitions, which even among the Catholics themſelves were conſidered as problematical, were determined by the Prelates at Trent to be articles of faith, and the uſual curſe (*anathema eſto*) was denounced againſt all thoſe who dared to differ in opinion.

Ferdinand himſelf had no ſmall trouble in watching leſt the ſpiritual power ſhould be increaſed, to the prejudice of the Catholic ſecular powers; for it was

the intention of the Council, that, inſtead of a reformation in the Church, which even the Catholic powers expected, the tables ſhould be turned, and a reformation, or rather a greater reſtriction, made of the ſecular powers themſelves. This, Ferdinand in many reſpects very happily prevented, though the way was ſtill indirectly laid for it. In matrimonial affairs, for inſtance, it had been the law in moſt countries, that a marriage which was contrary to the conſent of the parents of the parties, could be declared by a civil court of judicature to be null and void, and ſet aſide. To get this buſineſs reſpecting matrimony out of the hands of the civil courts, it was reſolved at Trent, that no marriage could on that account be conſidered as invalid, becauſe the parents had not given their conſent. The Catholic part of Germany, it is true, ſubmitted to adopt the decrees of the Council of Trent; but many other Catholic nations either refuſed to adopt them at all, or elſe admitted them upon condition of reſerving their liberties.

A few years before the Council was finally diſſolved, in 1559, Ferdinand ſuffered the plan for a reformation in the Church, propoſed in 1548, to be revived, in which, though the principal doctrines of the Catholic Church remained unaltered, yet a variety of ſuperſtitious ceremonies, which were not approved of, were omitted. Of this, however, the Council made no uſe; and ſo far were they from thinking of making any alteration in what all the enlightened Catholics acknow-

acknowledged as abufes, but from which the clergy, and particularly the monks, derived a confiderable profit; that, at the end of the Council, not only the abufe of indulgences, which had been fo long the fubject of complaint, but the monaftic fraternities, and other inventions of the middle ages, preferved their exiftence by the affiftance of the Jefuits, and were in fome refpects carried to a greater length than ever (*a*)*. Mutual

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(*a*) In the year 1569, the Jefuits printed at Rome "*Indulgentiæ* "*nonnullæ, quas perfonæ Societatis confequi poffunt*;" according to the contents of which, "celebrantes aut communicantes *toties* "*quoties*; recitantes coronam Domini noftri J. C. quæ continet "33 pater et 33 ave; dicentes canticum graduum; dicentes "pfalmum miferere," fhould have *indulgentias plenarias*. And further: "Dicendo 15 pater nofter, et 15 ave, in memoriam "omnium vulnerum quæ Chriftus D. N. pertulit, 1500 anno- "rum indulgentiæ; fingulis diebus recitantes pater nofter, et "ter Jefum nominantes, femel in die, 1000 annorum indulgen- "tiæ." It is further faid, "Sacerdotibus celebrantibus miffas "tres pro anima alicujus defuncti ufque ad tertium gradum incl. "fuper uno altari in ecclefia collegii (S. J.), vel domus ab ejus "fuperiore ftatuto, conceffum eft liberari eam a pœnis purgatorii "per modum fuffragii," &c. The Jefuits moreover inftituted various Orders in the manner of monaftic fraternities, fuch as the companions of the Order of St. Michael and St. Mary, for ftudents; other fuch Orders, likewife, of the Suffering Mother, for married women; of the Holy Trinity, for burghers: others again for the fecular clergy, for journeymen tradefmen out of place, with the fraternities of the Laft Sufferings, of the Heart of Jefus, the Devoted to the Heart of Jefus, &c. At Augfburg, in 1561, they introduced their controverfial fermons, their exercifes, as they called them, and felf-flagellation, &c. and contrived to appropriate the difpofal of the bleffings of St. Vincent, St. Peter, St. Felix, St. Lucas, &c. as well as the general abfolutions, particularly a fort of plenipo- tentiary

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Mutual complaints arose now, both among the Catholics and Protestants, at the Diet; from the former, on account of the continued suppressions of the

tentiary right of disposing of the Pope's blessings, which crept in among the spiritual Orders. All this is discussed at large in "the Letters on the Weeds scattered during the Epoch of Jesuits."

* Some judgment may be formed of the principles of the Jesuits from the following quotations from the works of their celebrated moralists, Bauny, Ercobar, Emanuel Sa, Molina, Less, Filliritius, Sauchez, Laymann, Hurtado, Azor, Amicus, Tambourin, Decastillus, Tollet, Celot, Paza, Maldonat, Reginald, Caramuel, De Santoman, Mascareuhar, Conink, Sirmond, Vasquez, Hereau, Valentia, Mariana, Suarez, Buserbaum, &c.

"Si jurans usurpat verba materialiter, nihil per illa confirmare "volens, non peccat mortaliter; immo credo, nec hunc venialiter "peccare, quia nullum est mendacium."—Sauchez, Op. Mor. l. iii. c. 6. n. 10. p. 24.

"Dicit quis confessario, se velle cum eo confessionem genera-"lem gerere, non ideo tenetur, omnia mortalia exprimere, quia "quamvis mentiatur, id tamen parum refert ad confessarii judi-"cium."—Escob. p. 7. ex. 4. n. 118. pag. 818.

"Quoties quis sive vere, sive ficte promittens matrimonium, "immunis est ob aliquam causam ab implendi obligatione, potest "a judice vocatus jurare, se non promisisse, intelligendo, ita ut "teneatur implere."—Sauchez, Op. Mor. l. iii. c. 6. n. 32. p. 29.

"Si concubina nimis utilis esset ad oblectamentum concubina-"rii, dum deficiente illa nimis ægre ageret vitam, et aliæ cepulæ "tædio magno afficerent concubinarium; & alia famula ad id "nimis dificile inveniretur, elicere illam non erit concubinarius "obligandus, quia oblectamentum dictis circumstantiis conside-"ratum est majoris æstimationis, quam quodcunque bonum tem-"porale."—Sancius in Select. Disp. 10. n. 20.

"Pingentes turpia, histriones eadem representantes, ex quibus "mortaliter scitur multos peccaturos, si eo lucro indigeant ad "victum,

the convents; and from the latter, on account of the ECCLESIASTICAL RESERVATION. A division likewise was more apparent between the Lutherans and Calvinists. During both these reigns, however, the religious

" victum, non recusarem licere."—Tamburin, l. v. c. 1. § 4. p. 28.

" Clericos non peccare mortaliter, principum secularium leges " violando, quia legibus hisce directe non tenentur."—Escobar, c. 15. probl. 19. p. 162.

" Non solum publica meretrix, sed etiam occulta & mariata " potest retinere pretium fornicationis & adulterii."—Dicastillus, L. ii. T. II. Disp. 6. p. 1. n. 18.

" Expresse excludere finem multiplicandæ prolis, immo etiam " cupere filios non procreare veniale est."—Tambur. l. xvii. c. 3. § 5. n. 7.

" Licebit clerico vel religioso calumniatorem gravia crimina " de se vel de sua religione spargere minantem occidere, quando " alius defendendi modus non suppetat."—Amicus, T. V. de Just. & Jure Disp. sect. 4. n. 76. p. 537.

" Legisti hanc doctrinam, et inquiris, an homo religiosus, qui " fragilitati cedens fœminam vilem cognovit, quæ, honori ducens " se prostitutam esse tanto viro, rem narrat, et eadem infamat, " possit illam occidere? Quid scio? At audivi ab eximio S. N. S. " Theologiæ Doctore, magni ingenii et doctrinæ viro: potuisset " amicus hanc resolutionem omisisse; at semel impressam debet " illam tueri, & nos eandem defendere. Doctrina quidem est " probabilis; sed qua posset uti religiosus, et pellicam occidere, ne " infamaret?"—Caramuel, Fund. 55. § 7. pag. 551.

" Si quis falsis criminationibus apud principem aut viros ho- " nestos te infamare parat & nititur, et aliud non possis damnum " illud avertere, nisi eum occidendo, poteris eum occidere—idem " dicendum si crimen sit verum, dummodo sit occultum."—Dicast. L. ii. T. II. Disp. 12. p. 4. dub. 2. n. 414.

" Est autem unus casus, in quo licet privato cuilibet, occidere " eum; puta tyrannus est in civitate aliqua, quem aliter non pos- " sunt

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religious peace, upon the whole, was punctually preserved.

When we consider the persecutions which the Protestants suffered in the Netherlands and France, it cannot be denied, that it was owing in some measure to the personal disposition of Ferdinand I. and Maximilian II. and partly to the fortunate equipoise of the Catholic and Protestant Electors, that Germany remained so quiet.

One event occasioned a public disturbance, which was not to be attributed so much to the religious differences,

" sunt cives expellere."—Tollet in summa, l. 5. c. 6. n. 17. p. 738.

" Tamen adverte duplicem esse tyrannum, unum potestate & " dominio, qui non habet titulum verum, sed tyrannice occupat " regnum; & hunc licet occidere, ut diximus, dum aliter respublica " non potest liberari, & dum spes est probabilis libertatis: aliter " non licet privato cuilibet occidere. Adverte alterum esse tyran- " num administratione, qui habet quidem verum titulum, sed " tyrannice tractat subditos; & hunc non licet absque publica au- " thoritate occidere."—Idem.

" An comedere & bibere usque ad satietatem, absque necessi- " tate, ob solam voluptatem, sit peccatum? Cum sanctio respondeo " negative, modo non obsit valetudini."—Escob. T. ii. ex. 2. n. 202. p. 304.

" Quodnam peccatum gula est? Ex genere suo veniale, etiamsi " absque utilitate se quis cibo & potu usque ad vomitum in gur- " gitet, nisi ex ejusmodi vomitione gravia saluti incommoda ex- " periantur. Mortale non est, immo quamvis advertenter id fa- " ciat ac evomat."—Id. cap. 8. n. 56. p. 288.

" Cum peccatum sit essentialiter offensio & injuria Dei, neces- " sario sequitur, sublata Dei cognitione, nec peccatum nec æter-

" " nam

differences, as to the actual remains of the former inclination to private war. William de Grumbach, one of the free nobles of Franconia, procured Melchior, Bishop of Würtzburg, to be shot at his own residence; and afterwards not only obliged the Chapter of Würtzburg to capitulate, after laying siege to the city, but persuaded Duke John Frederick, of Gotha, to receive him at his castle of Grimmenstein, and not only to prepare for defence in case of an attack, but make extensive warlike preparations for other

"nam pœnam esse."—Sfondrata in Thesi Disputationis Leodiensis, 1587. d. 19. Febr.

"Ergo talis homo, ignorans Deum, non peccabit mortaliter, "etiamsi alium occidat."—Roderic, Cursus Theolog. Tom. VII. Tract. de Unitate Dei et Trinit. Disp. 2. sect. 3. p. 31.

"Veniale est, vellicare genas, et mamillas tangere monia-"lium."—*Benzius in Dissertat. in casus reservatos.*

"Licet procurare abortum ante animationem fœtus, ne puella "deprehensa gravida occidetur aut infametur."

"Videtur probabile, omnem fœtum, quamdiu in utero est, ca-"rere anima rationali, et tunc primum incipere eandem habere, "cum paritur; ac consequenter dicendum erit, in nullo abortu "homicidium committi."

"Famuli & famulæ domesticæ possunt occulte heris suis sur-"ripere ad compensandam operam suam, quam majorem indicant "salario, quod recipiunt."

"Licitum est filio gaudere de parricidio parentis a se in ebrie-"tate perpetrato propter ingentes divitias inde ex hæreditate "consecutas.

"Clarum videtur, fornicationem secundum se nullam invol-"vere malitiam, & solum esse malum, quia interdicta.

"Mollities jure naturæ prohibita non est. Unde, si Deus eam "non interdixisset, sæpe esset bona, & aliquando obligatoria sub "mortali."—German Spectator, August 1788. No. 23.

BOOK VI. other enterprizes. The commotion which this occasioned was quieted by putting both the Duke of Gotha, Grumbach, and all who aided and assisted him, to the ban of the Empire. The execution of the sentence was committed to the Elector of Saxony, who, after a short siege, got possession both of Gotha and Grimmenstein. Grumbach and some of his associates were punished with death; and the unfortunate Duke of Gotha was doomed to pass the remainder of his life in a prison in Austria.

These disturbances, which were the last of their kind, were the occasion of a law which was enacted for cases of that kind, and inserted in the Recesses of 1548, 1555, and 1559, being now enforced, that, instead of a general Diet, only the Electors, and some States, deputed by the Princes, Prelates, Counts, and Imperial cities, were summoned to a Diet of Deputations (DEPUTATIONSTAGE) as it is called, in order to resolve with greater expedition on the measures necessary to be adopted on such sudden occasions. The Recess of this Diet, which was drawn up on the 18th of March, 1564, at Worms, contained several useful regulations, concerning more effectual measures to be adopted by the Circles against such disturbances, and breaches of the public peace. One circumstance which was made a particular object of the Recess was, the prodigious number of horse and foot soldiers which were sometimes raised under concealed names, without any distinction of the officers, or else under the pretence of their being an army in the service of this

or

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or the other potentate. Such armies as theſe met ſometimes of their own accord, without the knowledge or permiſſion of any regular government, and threw whole countries into diſorder, by ſuddenly aſſembling, fixing upon places for muſtering or encamping, marching through the country, ſetting fire to towns, raiſing contributions, and plundering the inhabitants. The only plan which ſeemed likely effectually to put an end to this was, to throw an additional power into the hands of the Colonel of the Circle. A general meeting of the Circles of the Empire, except that of Burgundy, was held for this purpoſe in the year 1567 at Erfurt, where an attempt was made to put a final end to the remains of theſe diſorders (*a*); and by adopting this meaſure, the internal peace of Germany has been ever ſince eſtabliſhed upon a firmer footing againſt attempts of that nature to diſturb the public peace.

(*a*) The Receſs of this meeting, which was held on the 27th of September, 1567, may be found in the late collection of the Receſſes of the Empire, Vol. III. p. 263.

CHAPTER II.

The first Years of the Reign of Rudolphus II. 1576—1582. Right of Primogeniture in the House of Austria, and several other Houses—Change which took place in the Manner of Voting in the College of the Princes, in the Year 1582.

Introduction of the right of primogeniture in the House of Austria, according to all appearance by Maximilian II.—The same regulations gradually made in the Houses of several Princes and Counts—Influence of the right of primogeniture on the number of secular votes in the College of the Princes—Rule accidentally observed in the limitation of the number from the year 1582.

A. C. 1576. AFTER the death of Maximilian II, a revolution took place in the House of Austria, which probably owed its origin to a family compact, made among themselves. Hitherto, whenever a reigning Prince of that House left several sons, a division had been made in their favour; so that, although the proper Dutchy of Austria, according to the charter granted by Frederick I. in the year 1156, was always to descend entire according to the right of primogeniture, yet the other countries belonging to the House, such as Stiria, Tyrol, &c. were divided, and served as a provision for the younger sons, and their successors, to enable them to live as reigning Princes.

Thus

Thus, by a will which Ferdinand I. made on the 25th of February, 1554, and which was ratified by his ſons, by a particular treaty, on the 1ſt of March, 1564, Maximilian II. acquired the poſſeſſion of Hungary, Bohemia, and Auſtria, entirely for himſelf. His brothers were, however, ſtill reigning Princes; Ferdinand in Tyrol, and the territories of Upper Auſtria; and Charles in Stiria, Carinthia, and Carniola. On the other hand, of the ſix ſons which were left by Maximilian II, only Rudolphus II, the eldeſt, ſucceeded to the rank of Sovereign; the others were only allowed a ſuitable revenue for their maintenance, or elſe provided for in ſome other way. We may conclude, therefore, from this event, that Maximilian II. muſt have introduced the right of primogeniture, by a new and general order; though this order, to the beſt of my knowledge, has never been diſcovered. His offspring, however, did not long enjoy the advantages of it, for the family became extinct in the firſt generation. His brother Ferdinand indeed left ſons in Tyrol; but by a marriage unſuitable to his rank, with Philipina Welſerin, the daughter of an Augſburg Patrician, the children were prevented from inheriting either their father's patrimony, or his title of Archduke of Auſtria. The family was afterwards continued in the line of Stiria alone, and all the territories of the German branch of the Houſe of Auſtria were united in Charles's ſon and grandſon, Ferdinand II. and III.; except that Ferdinand II's brother Leopold, upon the death of the Archduke Ferdinand, who had married Welſerin,

ſucceeded

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ſucceeded to a part of the inheritance of Tyrol, and left it to his ſon Ferdinand Charles, who died in the year 1662, without male iſſue.

The eſtabliſhment of the right of primogeniture was gradually introduced in the Houſes of ſeveral Princes and Counts, as in Mecklenburg in 1573, in Brunſwick-Wolfenbuttel 1582, in Bavaria 1588, in Palatinate Deux-Ponts 1591, Lippe 1593, Sain-Wittgenſtein 1593, Heſſe-Darmſtadt 1606, Holſtein-Gottorp 1608, Naſſau-Orange 1618, Wied 1624, Lorraine 1625, Heſſe Caſſel 1628, &c. But there were ſtill many Houſes which were very much againſt the introduction of the right of primogeniture, becauſe they conſidered it to be inconſiſtent with an expreſſion in the Bible, " If we are children, we are alſo heirs ;" and pronounced a curſe upon any of their offspring who ſhould ever afterwards think of introducing this mode of inheritance.

One of the conſequences of the frequent introduction of the right of primogeniture was, that ſeveral Princely Houſes became extinct, owing to the brothers being no longer able to marry ſuitably to their rank, and continue their family, as they formerly did when the territories were divided. The number of the votes of the ſecular Princes in particular, at the Diet, ſoon viſibly decreaſed, as fewer reigning Princes appeared in the Council. Hitherto it had been a conſiderable advantage to the ſecular Princes, that the votes were reckoned according to

the number of perſons preſent; as it gave them an advantage over the ſpiritual Princes, whoſe number was always invariably the ſame. On the ſecular bench, the number of ſuffrages was increaſed by every death, if a father left any ſons behind him, who divided the patrimony among them. Thus, as long as Philip, ſurnamed the Generous, lived, all Heſſe paſſed for a ſingle vote, becauſe it was all in his poſſeſſion; but when his four ſons ſeparated, and ſettled in Caſſel, Marburg, Rheinfels, and Darmſtadt, they had four votes in the College of the Princes. When the right of primogeniture became more general, this advantage was loſt.

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It may be attributed to this circumſtance perhaps, that the whole conſtitution of the Diet, with reſpect to the number of the votes of the Princes, was, during this reign, totally altered. The Diet, though neither the reaſon nor the exact circumſtances which occaſioned it, appear, ſeems, in 1582, to have laid down an entire new rule for the future. Inſtead of the number of the ſecular votes being, as formerly, uncertain, and ſometimes more or leſs, according to the number of reigning Princes in a family, as only the perſons preſent were reckoned, more regard was afterwards paid to the territories than to the perſons themſelves; and the number of votes afterwards always continued, as it happened accidentally to be at the Diet in 1582. If at that time there were ſeveral lines, the ſame number of votes were to be given in future, though they became altogether extinct, as in the

BOOK VI. the caſe of the Houſe of Brunſwick-Luneburg, which was then divided into the lines of Calenberg, Zelle, Wolfenbuttel, and Grubenhagen. Two of theſe lines were ſoon afterwards extinct; yet the votes have been ſtill continued in the College of the Princes. If, on the other hand, a territory, in 1582, had only one Sovereign, and he left ſeveral ſons, who divided again, ſtill there remained but a ſingle vote. This was the caſe with the Houſe of Anhalt; as Prince Joachim Erneſt, in 1582, was in poſſeſſion of all Anhalt. In 1586, his four ſons founded the reigning branches of Deſſau, Bernburg, Cothen, and Zerbſt; yet, notwithſtanding this, they reſerved but a ſingle vote. If the owners of a territory likewiſe were all extinct, after the year 1582, and it came to another Prince, the former vote was ſtill continued; as was the caſe directly afterwards with the Princely Counts of Henneberg in 1583, who at that time became extinct; and ſince that, with Pomerania, Leuctenberg, and ſeveral other countries. Inſtead of which, the votes of all countries, the owners of which died before the year 1582, no longer exiſt; as in the inſtances of Carinthia, Stiria, Carniola, Teck, and innumerable other countries.

CHAPTER

CHAPTER III.

Commencement of fresh Religious Differences, during the Reign of Rudolphus II.

Private Counsel of the Spaniards and Jesuits—Disturbances in the Netherlands—Further division of the Lutherans and Calvinists, occasioned by the so-denominated CONCORDIENBUCH—Attack of the Jesuits on the obligatory power of the Religious Peace—Principles advanced in support of a violent Catholic counter-reformation—Their effects in Stiria and Würtzburg, and, after some changes in religion, in the country of Baden—Persecution of the Protestants at Aix-la-Chapelle—The Ecclesiastical Reservation enforced in the Archbishoprick of Cologne and Bishoprick of Strasburg—Critical situation of the religious foundations in the possession of the Protestants in Upper and Lower Saxony—Commotions occasioned by the introduction of the new Gregorian Calendar.

THE principal difference between the reign of Rudolphus II, and that of his predecessor, soon discovered itself by that Emperor's taking but little part himself in the public business, and being guided by the instigations of the Spanish Court, and Counsel of the Jesuits. After the beginning which was already made, to extirpate the Protestant religion in the Low Countries, and in France, the turn came next to Germany. Matters were carried to such lengths in the Netherlands, that on the 23d of January, 1579, seven provinces concluded a union with each other

BOOK VI. at Utrecht; and on the 26th of July, 1581, entirely renounced their obedience to the Spanish Monarchy. This occasioned the hostilities, which had commenced already in the year 1568, to be so violently carried on, that peace was not finally concluded, till after a war of eighty years. During this period, it was very natural that the disorders in the Netherlands should be frequently intermixed with the affairs of Germany. The Protestants of Germany could not be indifferent to the fate of those in the Netherlands. The Imperial Court and the Catholic party declared in general for the Crown of Spain; so that both parties were inclined, on every occasion, mutually to assist their friends.

It was a great misfortune for the Protestants, that the theological disputes which had already arisen between Luther and Zuinglius, were carried to much greater lengths by John Calvin of Geneva; and, after the death of Melanchton, broke out in great fermentation among the divines of Upper and Lower Saxony. It was thought that this might be remedied, if a new symbolical book could be agreed upon, which all the ministers of the Church, and those who had the care of schools among the Protestants, should adopt as their confession of faith. Such a book as this, called the CONCORDIENBUCH, the plan of which was drawn up by one James Andrea, a divine of Tubingen, was produced, after the labour of many years, at Closterbergen, near Magdeburg, in 1580. In this book, all the articles which had hitherto

been

been the subject of controversy between both parties, were finally settled in such a manner, that a division was made between the Lutherans and Calvinists, almost as great as that which was made by the Council of Trent between the Catholics and Protestants. This book was introduced in most of the Lutheran countries of Germany, but not in all; much less did it meet with the expected approbation in Denmark and England. A misunderstanding arose concerning it between the Lutheran and Calvinist States in Germany, which was extremely prejudicial to the common cause of the Protestants in general. Even the fortunate equipoise which the three Protestant Electoral Courts supported, against the three Catholic Spiritual Courts, suffered exceedingly, through the misunderstanding which arose between the Elector of Saxony and the Elector Palatine, the latter of whom joined the party of the Calvinists, while the other continued true to the Lutherans.

The Jesuits derived from all these circumstances the greatest advantage. They thought they might now boldly assert, that the Religious Peace had no legal permanency, and was at best made only conditionally; that it was a temporal thing, which now had lost its force, and was no longer capable of any application; that it could not be applied to the Calvinists, because the Lutherans did not acknowledge them to be of the same religion; nor to the Lutherans, because they adhered no longer to the Augsburg Confession, which was the ground of the Reli-

gious Peace, but had adopted a new ſymbolical book, which the Religious Peace knew nothing of.

They pretended, moreover, that Catholic Sovereigns, who had Proteſtant ſubjects, had now as much right to deprive them of their religious worſhip, and bring them back to the Catholic Church, as an Elector of Saxony, a Landgrave of Heſſe, and other Proteſtant States of the Empire, had to introduce the Proteſtant worſhip, which they had formerly done in their territories, eſpecially as the declaration of Ferdinand I. in favour of the admiſſion of the Proteſtant worſhip, for the Proteſtant ſubjects of Catholic Sovereigns, was now conſidered as invalid.

When the queſtion aroſe, whether it was right to uſe violent means to bring Proteſtants back to the boſom of the Catholic Church, the Jeſuits made this diſtinction in their writings:—that though it would not be right to compel a Jew or a Turk to be a Chriſtian, becauſe they did not already belong to the Church; yet that, as Proteſtants were once become members of the Chriſtian Church by baptiſm, they were therefore under an obligation to believe whatever the Church believed, or elſe might be compelled to it by every poſſible act of violence; that it was, moreover, for their own advantage; and exactly the ſame caſe as if a man who was raving mad, or lying with a burning fever, was bound, and compelled to receive ſuch medicine as was beneficial, and prevented from injuring himſelf and others.

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Supported by such arguments as these, and fired with the greatest hatred against any thing that bore the name of heresy; animated too by a zeal to procure the salvation of so many mortals who would otherwise be damned; and at the same time purchasing an eternal reward for themselves; the Catholic Princes attempted now to begin a counter-reformation, as it was called, in their respective territories. This was particularly the fate of the Protestants in the Austrian Netherlands, under the Archduke Charles of Stiria, and in the country of Würtzburg, where Bishop Julius flattered himself that, from the year 1585 to 1587, he had restored no less than a hundred thousand persons to the Church; and violently drove those who would not submit, together with their ministers, from the place where he himself resided, and from a hundred and twenty places in his Bishoprick.

Neither were other means and arts neglected, wherever there was a possibility of persuading persons of distinction, or such as were of any sort of consequence, to come over to the Catholic Church, or to procure the children of a mixed marriage to be educated in the Catholic religion. Thus, John Pistorius, one of the Council of the Margrave James of Baden Hochberg, became a Catholic, and in consequence of this the Margrave himself, who introduced the Catholic religion again in that part of the country which belonged to him. This counter-reformation, however, was not of any long duration, for shortly afterwards the Mar-

BOOK VI. grave died; and his brother Erneſt Frederick again ſuffered the Proteſtant religion to have its free courſe throughout the country. In Baden Baden, Philip II. was educated by the relations of his mother in the Catholic religion, and his couſin and ſucceſſor Edward was of the ſame perſuaſion; which occaſioned a revolution in that country to the prejudice of the Proteſtants in favour of the Catholics.

The inhabitants of the Imperial cities had by no means a more favourable proſpect; for at Aix-la-Chapelle, the burghers of Antwerp, who were Calviniſts, and had fled thither for protection in the year 1567, were forbid the practice of the Proteſtant religion by an order from the Emperor; and their capability of being admitted to the Council, which was allowed in 1574, was now denied them.

At laſt, in order to eſtabliſh the ECCLESIASTICAL RESERVATION to the prejudice of the Proteſtants, every poſſible attempt was made in the two following caſes, and the object fortunately accompliſhed. In the Archbiſhoprick of Cologne, the Elector Gebhard, of the family of Truchſeſs of Waldburg, on the 19th of December, 1582, made public confeſſion of Calviniſm; and on the 2d of February, 1583, married Agnes Counteſs of Mansfeld, thinking he ſhould be allowed to keep his Archbiſhoprick during his life, withſtanding the Eccleſiaſtical Reſervation. He was obliged, however, by means of a Spaniſh army, which marched for that purpoſe from the Netherlands, to

to resign his Archbishoprick to Prince Ernest of Bavaria, who was appointed in his place. CHAP. III.

Prince John George of Brandenburg was equally unsuccessful. He was elected Bishop in the year 1592 by the Canons of Strasburg, fourteen of whom were Protestants, and seven Catholics. The Catholics protested against his election, and he was soon obliged to yield to Prince Charles of Lorraine, whom the Catholic Canons supported against him.

The Archbishopricks and Bishopricks of the Circles of Upper and Lower Saxony, viz. Magdeburg, Bremen, Halberstadt, Verden, Lubeck, Minden, Schwerin, Camin, Ratzeburg, Merseburg, Naumburg, Brandenburg, Havelberg, were almost all of them in the possession of Princes of the Houses of Saxony, Brandenburg, Brunswick, Mecklenburg, Pomerania, and Holstein; but their situation must of course have been exceedingly critical, as soon as the Ecclesiastical Reservation began to be enforced with violence.

The misunderstanding between the two religious parties was still further increased by a new Calendar, which was introduced in the Catholic States October 15, 1581, under the authority of Pope Gregory XIII, being proposed at the Diet for the whole of Germany. It was adopted, however, only by the Catholic States, and not by the Protestants. The Julian Calendar, which had been hitherto in use ever since the days of Julius Cæsar, was certainly far from being right. A. C. 1581.

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The ſolar year was there reckoned at 365 days and ſix hours; inſtead of which, it did not amount to ſo much by ſeveral minutes. This, in the courſe of ſo many centuries, had already made a difference of at leaſt ten days, which, in the Gregorian Calendar, were for this reaſon ſtruck off, viz. from the 5th till the 15th of October, to come again into proper order.

The rectitude and importance of this aſtronomical computation was certainly not evident to every body. A celebrated lawyer, Andrew Gail, gave it as his opinion, that the new Calendar was a fooliſh work. The grand queſtion however was, whether an order from the Pope was to be attended to? As the formation of the Calendar, and the appointment of the Eaſter feaſt, and other holidays, depended upon it, it was conſidered merely as an eccleſiaſtical object; and it had already been the ſubject of debate at the Council of Conſtance. At laſt, the matter was referred for a proper calculation to an aſtronomer at Rome; and the Pope thought he ſhould be able to carry the point by his own power. This, of courſe, met with oppoſition from all the Proteſtant States, who continued to adhere to the ancient Calendar, and reckoned therefore the days of the month ten days later than the Catholics.

In nations and ſtates where there was only one profeſſion of religion, it was but of little conſequence which Calendar was uſed; but in ſuch an empire as Germany, where, at a general Diet, and on ſeveral

other

other occasions, Catholic and Protestant States assembled together, or in towns where the inhabitants were of both religions, it must certainly have been the cause of great confusion, when one part of the people celebrated the feasts of Easter, Whitsuntide, Christmas, New Year's Day, &c. ten days sooner or later than the other; not to mention the confusion which must have arisen in other affairs, such as bills of exchange, markets, fairs, &c. It could not be otherwise, therefore, than that the mere difference of the old and new Calendar should afford fresh matter for complaint and for disputes, sometimes between a Sovereign and his subjects, and sometimes among fellow citizens with each other. CHAP. III.

CHAPTER

CHAPTER IV.

Freſh Diſpute concerning the Concurrence of the Juriſdiction of the Aulic Council with that of the Imperial Chamber.

Diſpute concerning the juriſdiction of the Aulic Council, occaſioned by the city of Donawerth being put to the ban of the Empire, and a conteſted ſucceſſion in Heſſe—Original pre-eminence of the Imperial Chamber—Scruples reſpecting the Aulic Council, how far its juriſdiction ſhould extend—The queſtion reduced to this, Whether the Emperor had another juriſdiction beſides the Imperial Chamber?—This queſtion properly decided, even according to the real intereſt of the Emperor—Unfortunate interruption of the viſitation of the Chamber in 1588—The ſpecious advantages which were at firſt promiſed, not obtained—Plan of the ſtatutes of the Chamber in 1613.

AT laſt, during this reign, it came again into agitation, that cauſes which belonged to the Emperor's juriſdiction were no longer left ſolely to the Imperial Chamber; but the Aulic Council likewiſe took cognizance of them, and even undertook the deciſion of ſuch cauſes, as the Emperors formerly only determined after having held a Court of the Princes. Thus it happened, that the city of Donawerth, a Proteſtant Imperial city in the Circle of Swabia, becauſe the inhabitants had oppoſed the proceſſion of a convent, which, contrary to law, was

made without permiſſion, was put to the ban of the Empire. The execution of the ban was not committed to the Swabian Circle, but to the Duke of Bavaria, who ſoon made himſelf maſter of the town; and Donawerth was converted from a Proteſtant Imperial city into a Catholic provincial one. In the ſame manner the Aulic Council received an accuſation from the Houſe of Heſſe-Darmſtadt againſt Heſſe-Caſſel; when the former, on account of the ſucceſſion to the vacant country of Marburg, which was diſputed between the two Houſes, omitting the reſort to the Auſtregues, made immediate application to the Emperor's Court: upon which, law-ſuits were continually brought afterwards before the Aulic Council, and admitted.

This could not be a matter of indifference to any of the States who conſidered it ſeriouſly. The Imperial Chamber had been once appointed as the court of judicature, which the Emperor and Empire had agreed ſhould exerciſe the Imperial juriſdiction in the laſt reſort, without there being any idea of ſentence being paſſed in the name of the Emperor, in any other place than in the Imperial Chamber, except where the Emperor was perſonally preſent, and held a Court of Princes, who were States of the Empire. For this reaſon, a regular mode of procedure was ſettled for the Chamber by a variety of laws, which the States had the beſt opportunity of conſtantly improving, by an annual viſitation. Even the members of the court were in the power of the

States,

States, as they were presented by them, and would take care, therefore, that they were such in whom they could confide; and by their annual visitation, they could keep a watchful eye over them, to see that they performed their duty; or at all events a legal recourse was left open, for all parties who thought themselves aggrieved, and chose to submit their cause to a formal revision.

The Aulic Council, on the contrary, was composed merely of such persons whom the Emperor thought fit to appoint, and who were totally dependent upon him, without there being any right of presentation vested in the Imperial States, or any visitation, or revision; neither was there any observation of strict orders of procedure. The whole institution of the Aulic Council, from its very origin, was never designed for the administration of justice, but as a ministry is usually established, the nature of which consists only in affording a Prince such advice, in particular cases, as is most advantageous for him, while the decision itself must be left to him. The Aulic Council was originally instituted, that the Emperor might be supplied, in cases which he referred to it, with a written opinion, the decision of which was to be expected from the Emperor himself, or from his Cabinet. What must have been the apprehensions of every Imperial State, when he put the case to himself, that a cause in which he was concerned might be referred for decision to the Emperor's Court! How must the Protestants have been alarmed,

when they knew that the Aulic Council was not compofed of any Proteftant members, like the Imperial Chamber, but confifted entirely of Catholic counfellors; and as they foon experienced that the power which the Jefuits and the Spanifh Minifter had in the Emperor's Cabinet, was not without effect in the refolutions formed upon the opinions of the Council, or had immediate influence by other means on this high tribunal! CHAP. IV.

This fubject was firft inquired into in a correfpondence occafioned by the profcription of the city of Donawerth. The turn they endeavoured to give the queftion was, Whether the Emperor had another jurifdiction concurring with that of the Imperial Chamber? They endeavoured therefore to render the Aulic Council not fo much the object, as the perfon of the Emperor himfelf. It was true, they faid that the Emperor had given his jurifdiction in commiffion to the Imperial Chamber; but as the diftinction was now made with jefuitical and fcholaftic fubtlety, not ABDICATIVELY, fo that he had wholly transferred his jurifdiction thereby, or totally renounced it; but that the Emperor had only granted his jurifdiction to the Imperial Chamber COMMUNICATIVELY, without reftricting himfelf from exercifing a jurifdiction, befides that of the Chamber.

According to the juft principles of a found and general policy, founded on the nature of juftice, and hiftorically compared with the peculiar conftitution of the

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the Germanic Empire, this would not be difficult to anſwer, ſince the exerciſe of the Emperor's juriſdiction, as it ought to be in the Imperial Chamber, was once fixed upon by the Emperor and Empire by a mutual and conſtitutional agreement, from which neither party could recede without a conſent equally mutual; the Emperor's Court, therefore, was by no means entitled to eſtabliſh any other public tribunal by its own authority, beſides that which was already once agreed upon with the Imperial States, as the ſupreme tribunal of the Empire.

In fact, it would have been much more conducive to the real intereſt of the Emperor, if the Imperial Chamber had been left as it was originally agreed upon, and more pains taken to raiſe its conſequence. The more perfect this tribunal could be made, that its decrees might be raiſed above all objections, the more weight would have been added to the Emperor's authority; for it certainly could never be more ſolidly ſupported than by the eſtabliſhment of an active and unbiaſſed tribunal. But on the contrary, the Imperial Chamber was rather ſuffered to decline, though its decrees were iſſued in the name and with the ſeal of the Emperor alone.

A circumſtance which gave the Imperial Chamber, during this reign, an irrecoverable blow, was the neglect of the annual viſitation. According to the former inſtitution, there were always ſeven Imperial

States,

States, in the order in which they had their seat and voice at the Diet, appointed for that purpose. Among these, there were generally more Catholics than Protestants; and the latter, when they found themselves aggrieved by a partial majority, could gain no redress. Thus, in the year 1587, at the visitation and revision, there were five Catholic States, and only two Protestant ones, viz. the Electors of Mentz and Saxony, Salzburg, Duke John Casimir of Saxony, the Prelates, Swabian Counts, and the Imperial city of Cologne; of these, only the two voices of the House of Saxony were on the Protestant side. At the visitation in the year 1588, were the following voices, as they were delivered in their respective places at the Diet, viz. the Electors of Mentz and Brandenburg, Magdeburg, the Margrave George Frederick of Brandenburg, the Prelates, the Counts of Wetteravia, and the Imperial city of Ratisbon. Here the case was quite the reverse; the Elector of Mentz, and the vote of the Prelates, happened to be the only Catholic votes, the other five were Protestant. To prevent this majority of votes, which was now in favour of the Protestants, from having its natural effect, the visitation was discontinued; and thus this admirable institution was put a stop to, for a prodigious length of time (*a*). The Imperial Chamber, therefore, of course declined; which tended as much to

(*a*) Vide JOH. PHIL. CONR. FALKE's Preservation and Confirmation of the Court of Revision. Hanover, 1777. p. 29, 25.—PÜTTER's Literature of the Public Law of Germany, Vol. II. p. 188.

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to lessen the Emperor's authority, as it was prejudicial to those parties whose causes were then depending.

It certainly appeared to be greatly for the advantage of the Emperor's Court, to take immediate cognizance of such important causes as the above-mentioned affair of the Marburg succession, and other causes which were of still greater consequence, as the succession to Juliers, and the dissensions in the House of Baden, and several Protestant Houses, and make them subservient to private political designs. But in the end, most of these attempts, though so specious in appearance, failed: and what a loss must the Emperor's Court have sustained, when the sentences pronounced at his tribunal were exposed to complaints, which the most impartial persons could not consider groundless!

At the Diet held in the year 1598, a measure was adopted with respect to the Imperial Chamber, which might have been of great utility; but the effect of it has not, even to the present day, been fully experienced. In the year 1555, when the statutes for the Imperial Chamber were promulgated for the last time, in the reign of Charles V, so many additions and alterations were made in the decrees of the visitation, and recess of the Empire which afterwards followed, that in almost every passage it required the most laborious and troublesome inquiry, whether such a law could be used, or whether there was not some new law which superseded

or

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made an alteration in it? It was for this reason resolved, that the statutes of the Chamber should be again drawn up, and such improvements and additions made as were requisite. This work was completed, and in the year 1603 delivered to the Elector of Mentz, who laid it before the Diet of the Empire. In the year 1613 it was printed (*a*), under the title of "A Plan for improving the Statutes of the Imperial "Chamber," that it might be examined at a visitation, and afterwards provided with its legal force, at the pleasure of the Emperor and Empire. This, however, from that day to this, has never happened; for those times seemed least suited for the accomplishment of a work, which required calm consideration, and the unanimous concurrence of the Emperor and States.

(*a*) PÜTTER's Literature of the Public Law, Vol. II. p. 419.

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CHAPTER V.

Diſputes concerning Succeſſion in the Houſe of Auſtria, and concerning Juliers and Berg, in the Reign of Rudolphus II. and Mathias—Commencement of the Thirty-Years War.

Commotions concerning the future ſucceſſion in the hereditary territories of the Houſe of Auſtria—Diſputes concerning the ſucceſſion in Juliers and Berg, which threatened to be of ſerious conſequences—Different alliances of both religious parties, under the names of the Union and the League—Succeſſion of the Emperor Mathias to the throne, and capitulation at his election—Revolution in the affair of Juliers, occaſioned by a rupture between the Houſes of Brandenburg and Palatine-Neuburg—Change in the religion of the latter—Hoſtilities at Prague, and the unexpected commencement of the thirty-years war.

BESIDES the affairs above mentioned, of Cologne, Aix-la-Chapelle, Donawerth, Heſſe, &c. other diſturbances had already broken out, in a conſtant ſucceſſion, during the reign of Rudolphus II. Even the Houſe of Auſtria was threatened with great commotions, by an attempt which was made to change the ſucceſſion on the death of Rudolphus, by paſſing over his brother Mathias, into the line of Stiria; becauſe it was thought that more confidence could be placed in their zeal for religion. Mathias, however, gained the advantage, by ſeizing his poſſeſſions in

1608

1608 and 1611; and the Proteſtants, both in Auſtria, Bohemia, and Sileſia, obtained freſh aſſurances of being protected in their religion.

The moſt important event happened on the death of Duke John William of Juliers, who was the laſt of his Houſe, on the 25th of March, 1609. The attention of the public had been fixed for ſeveral years upon the ſucceſſion to the expected vacancy in the extenſive countries of Juliers, Berg, Cleve, Mark, Ravenſberg, and Ravenſtein; as it was known, that the ſeveral Houſes of the Elector of Saxony, the Elector of Brandenburg, Palatine Neuburg, Palatine Deux-Ponts, the Saxon Dukes of the line of Erneſt, and the Margrave of Burgau, had each of them their reſpective claims, concerning which it would be a difficult matter to come to an amicable deciſion. This affair became of double importance, when, though the Elector John Sigiſmund of Brandenburg, and Philip Lewis Count Palatine of Neuburg, entered into an agreement on the 31ſt of May, 1609, to take the government between them in common, till the ſucceſſion ſhould be ſettled, the Emperor appointed the Archduke Leopold as ſequeſtrator, who got poſſeſſion of the fortification of Juliers till September 1610, when the French and Dutch armies drove him out, and reſtored the countries to the Houſes above mentioned, by which they had been employed as auxiliaries.

Under theſe circumſtances, on the 3d of February, 1610, a union was formed by the Proteſtant States,

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in order that thoſe evils, by which they thought themſelves aggrieved, might be remedied. The Elector Frederick IV. was declared the head of this; and after him, his ſon and ſucceſſor Frederick V. But ſoon afterwards a counter-league was formed againſt them, at the head of which was Maximilian Duke of Bavaria, and all hopes of a compromiſe were now deſtroyed; as the interviews and negociations propoſed for this purpoſe were fruitleſs.

On the death of Rudolphus II, his brother Mathias, to whom, during his life-time, he was obliged to reſign all his hereditary dominions, was elected Emperor without the leaſt commotion; except that ſome new articles, inſerted for the firſt time in his capitulation, occaſioned a proteſt from the Princes. All other public affairs remained in their former fermentation. One of them produced an unexpected rupture, in a quarter too where the leaſt preparation was made againſt it; and at laſt, the flames of war broke out with ſuch violence, that it was impoſſible to extinguiſh them.

This rupture was occaſioned by the affair of Juliers. Prince Wolfgang William of Palatine-Neuburg, the eldeſt ſon of Philip Lewis, received a box on the ear from the Elector of Brandenburg, acroſs the table, when he was at dinner at Cleve. He was deſigned to be married to the Elector's daughter; but this circumſtance induced him to go over to the Court of Bavaria, and marry, in 1613, a ſiſter of Duke Maxi-

Maximilian; and on the 23d of May, 1614, he embraced the Catholic religion (*a*). This gave the affair of Juliers a very different turn; as Palatine-Neuburg was enabled from that period to depend upon the Catholic party and on the Crown of Spain for aſſiſtance. This change of religion was, beſides this, the ſource of a variety of important revolutions in a conſiderable part of Germany. At firſt, indeed, there were hopes, that as the father Philip Lewis was ſtill living, this change of religion would have no influence upon the country itſelf. Philip Lewis, however, ſurvived this event only till the 12th of Auguſt, 1614; and on the 21ſt of February, 1615, Wolfgang William came to Neuburg as reigning Prince. He then not only procured the church belonging to his palace to be re-conſecrated, and introduced the Catholic ſervice there; but eſtabliſhed that religion throughout his country. His brothers, Auguſtus and Frederick, who, in conſequence of their father's will, had Sulzbach and Hilpolſtein for their reſidences, continued Proteſtants; but William Wolfgang claimed the ſupremacy in thoſe countries, as eldeſt ſon, and ſoon began a counter-reformation in favour of the Catholic religion, which he ſupported by

(*a*) In the German ZUSCHAUER (Spectator), Vol. III. No. 7. 1785. p. 39. is a letter, written by the Count Palatine Wolfgang William, April 24, 1614, to his father, in which he ſays, he had tried to perſuade Maximilian Duke of Bavaria to embrace the Proteſtant religion; but that what he had ſaid, had tended rather to convince him in favour of Popery, particularly by means of the Catechiſm of Peter Caniſius; and he hoped to bring his father to the ſame conviction.

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by the moſt violent means. In the ſequel of the hiſtory we learn, that this line of Neuburg, in the year 1685, acquired the poſſeſſion of the Palatine Electorate, and even there made almoſt a total change in the ſtate of religion.

It was not, however, either the troubles occaſioned by this change of religion, or the affair of Juliers, nor indeed any of the particular diſputes which happened at this period; but a very different event, viz. the hoſtilities which were produced at Prague, by complaints of a breach of the aſſurance of religious ſecurity in Bohemia, which occaſioned the commencement of thoſe unhappy broils, which are diſtinguiſhed by the name of the Thirty-years War, as the only one of its kind throughout the Germanic hiſtory.

CHAPTER VI.

Progress of the Thirty-Years War during the Reign of Ferdinand II. till the Peace of Prague. 1619—1635.

Battle of Prague, its effect, profcription of the Elector Palatine—Electoral dignity transferred from the Palatinate to Bavaria—The equality which had hitherto prevailed in the religion of the Electors deftroyed for ever—Other proceedings againft Baden-Dourlach and Heffe-Caffel—Counter-reformation fupported by Tilly—Imperial edict of reftitution againft the Proteftants—Unfuccefsful enterprize of the King of Denmark—Peace of Lubeck—The power of Sweden the only remaining fupport of the Proteftants, in the exertion of which Guftavus Adolphus exceeded all expectation—His death, at the victory he gained at Lutzen, did not immediately deftroy it, until the Elector of Saxony made peace at Prague, after his defeat at Nordlingen—Contents of the Peace of Prague—Its confequences.

AS foon as the battle fought on the White Mountains, near the city of Prague, on the 8th of November, 1620, was determined by the fortune of war in favour of Ferdinand II, a plan was immediately laid for punifhing Frederick V, the Elector Palatine, by putting him to the ban of the Empire for expreffing a wifh to accept of the crown, which was offered him by the difcontented States of Bohemia. The Count of Hohenzollern, who was then Prefident of the Aulic Council, fcrupled to give his confent; A. C. 1620

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but his objections were not able to prevent the ſentence from being paſſed, which was ſuggeſted by Ognate the Spaniſh Miniſter, and by the advice of the Jeſuits. The fortune of war, which ſtill continued the ſame, not only favoured the execution of the ban in the Upper Palatinate, which was immediately transferred to the Duke of Bavaria, but likewiſe in the Lower Palatinate on the Rhine, which, after the commencement of hoſtilities by the Spaniſh army, was, by the capture of Heidelberg and Manheim in September and November 1622, completely conquered by General Tilly.

These circumſtances were immediately made uſe of, at a Diet of the Electors and Princes, ſummoned by Ferdinand II. at the end of the year 1622, at Ratiſbon, to deſtroy the religious equality which had hitherto ſubſiſted among the ſix Electors; for a decree was paſſed on the 23d of February, 1623, by means of a majority of votes, by which the former Palatinate Electorate was transferred to the Houſe of Bavaria. The Emperor very conſiderately did not convene a general Diet for the purpoſe, but only a few Princes beſides the Electors, from whom he was under no apprehenſion of an oppoſition. The Electors of Saxony and Brandenburg indeed only appeared by their ambaſſadors, who reported the ſtate of the affair to their Courts. But in the years 1624 and 1626, theſe two Courts were prevailed upon to give their conſent. It was particularly ſtriking, that no regard was paid either to the ſon of the Elector,

who was put to the ban, nor to his brother, or any other relations of the Palatine Houfe; but that the Electorate was transferred to a very diftant relation, of a different branch of the family. This, however, is eafily accounted for, by the defign to deftroy the religious equality for ever; and if ever a plan fo remote in its views fucceeded, certainly it was this.

The turn now came to the Houfes of Baden-Dourlach and Heffe-Caffel, both of whom loft their caufes, and had fentence paffed againft them by the Aulic Council. General Tilly, who had now no other enemy to engage with, was appointed to fupport a counter-reformation in favour of the Catholic religion, againft the Proteftant fubjects of Catholic Sovereigns, where it was neceffary, by compulfive means, and recover the Archbifhopricks, Bifhopricks, or Abbies, and Prebends, which were in the hands of the Proteftants, as well as convents and other foundations, which were fuppreffed by Proteftant Sovereigns and Imperial cities, or occupied by Proteftant perfons, and reftore them to the Catholics.

After the battle of Lutter, near the Barenberg Mountain, where the King of Denmark, whom the Circle of Lower Saxony had fupplied with a reinforcement, was conquered by Tilly on the 27th of Auguft, 1626, a formal edict of RESTITUTION, which had been long in readinefs, was iffued on the 6th of March, 1629, by virtue of which, all the religious foundations, convents, and churches, which, in the opinion

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opinion of the Catholics, had been unjuſtly taken poſſeſſion of by the Proteſtants, were to be again reſtored to the Catholics. The Catholic States, likewiſe, were to meet with no oppoſition in the reformation commenced in their countries, and no other ſect tolerated than the adherents to the genuine Confeſſion of Augſburg. The execution of this edict was ſoon afterwards accompliſhed, as conformably to this as poſſible. Among others, the Archduke Leopold William, to whom the Archduke Leopold had already reſigned the Biſhopricks of Straſburg and Paſſau in 1625, not only got poſſeſſion of the Biſhoprick of Halberſtadt, and Abbey of Hirſchfeld, but of the Archbiſhoprick of Magdeburg, to which he was inducted by the Pope, inſtead of Prince Auguſtus of Saxony, who had been appointed by the former adminiſtrator: and the Proteſtants in general might be beſt informed from the writings of the Jeſuits of thoſe times (*a*), what they had further to expect.

The diverſion which Cardinal Richelieu made in the mean time, owing to the ſucceſſion to the Dutchy of Mantua, in Italy, which was juſt at that period vacated,

(*a*) The principal publications on this ſubject were, *Pacis Compoſitio Ictorum Dillingenſium*; Dilling. 1629. and a ſtrange ſet of writings which were occaſioned by "A Defence of the AUGAPFEL "(Eye-Apple) of the Proteſtant States, viz. the Augſburg Con-"feſſion, and Religious Peace," and publiſhed in anſwer to each "other; ſuch as "Spectacles for the Proteſtants' Eye-Apple," "A Bruſh for the Spectacles," "Bruſh upon Bruſh, or the Spectacle-"Bruſh Cleaned," &c.—PÜTTER's Manual of Germanic Hiſtory, Vol. I. p. 653.

vacated, and the peace which the Emperor, on this account, concluded on the 12th of May, 1629, with the King of Denmark at Lubeck, occaſioned, upon the whole, ſo ſmall a change in the ſtate of affairs, that the King was obliged to bind himſelf to interfere no further in the affairs of the German Empire, than what concerned the Dutchy of Holſtein. Even the Dukes of Mecklenburg, who had been put to the ban of the Empire, upon the pretence that they had admitted the Daniſh troops into their country, and whoſe Dutchy the Emperor had even given to General Wallenſtein, were not once mentioned in the treaty.

The King of Sweden alone remained, who could not view theſe proceedings with indifference. This Prince, however, was thought of ſuch little conſequence at Vienna, that in the war in which he was engaged with the Poles, it was the deſign of the Imperial Court to ſupport the latter, and invade the coaſt of Sweden with a fleet equipped for that purpoſe in the Baltic Sea—ſo far was the Emperor's intention from acknowledging Guſtavus Adolphus as King of Sweden, or even admitting his ambaſſador at the negociations for peace at Lubeck.

Yet this very Guſtavus Adolphus ſeemed to be alone deſigned for the reſcue of the German liberty and the Proteſtant religion. Secured on the part of Poland by a truce, which was effected for ſix years by means of Richelieu, he had ſcarcely marched his veteran troops,

which

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which had already been in the practice of war, within the German borders, before the success of his arms raised the astonishment of every one. Though it was not in his power to prevent Tilly's destruction of Magdeburg *, because he wished first to have sure possession of Pomerania, and was obliged to fight his way through the fortifications of Brandenburg and Saxony; yet by a victory gained over Tilly near Leipsic, on the 7th of September, 1631, in conjunction with the Electors of Brandenburg and Saxony, he procured at once such a degree of superiority, that the way was now opened for him, not only to the Emperor's hereditary dominions, but throughout the Germanic Empire.

The second victory gained at Lutzen, over General Wallenstein, November 6, 1632, was purchased, but too dearly, at the expence of Gustavus Adolphus's life †. By the conduct of the General who supplied his place,

* This city was besieged in 1631 by the Imperialists, under the command of Count Tilly. On the 20th of May it was stormed, sacked, and burnt, except the cathedral, some adjacent houses, and a few fishermen's cottages. Of thirty thousand inhabitants, there were but four hundred left. The barbarous Tilly spared neither age nor sex; and the soldiers obeyed the command of their General, by ripping up women with child, murdering infants in the sight of their parents, and ravishing the helpless virgins in the very streets, while many of these, to escape violation, ran into the Elbe, and others into the fire.—PUFFENDORF, lib. iii. § 15. PÜTTER's History of Germany. HART's Life of Gustavus Adolphus, Vol. I. p. 484. Account of the Destruction of Magdeburg, by CALVISIUS. Magdeb. 1727.

† HART's Life of Gustavus Adolphus. London.

place, Duke Bernhard of Weimar, and of Axel Oxenſtiern the Chancellor of Sweden, matters continued in a favourable train, till Bernhard was defeated at the battle of Nordlingen, September 7, 1634. This fatal event obliged the Swedes to retreat to Pomerania; and the Elector of Saxony, on the 30th of May, 1635, concluded a peace at Prague, which was far from affording any ſatisfaction to the Proteſtants. CHAP. VI.

With reſpect to the Peace of Prague, the following articles are the moſt remarkable. All religious foundations which were ſuppreſſed after the pacification of Paſſau, and all immediate foundations which were ſuppreſſed before that period, were to remain for forty years in the ſtate they were in on the 12th of November, 1627, and ſhould continue ſo in future, unleſs during that time ſome further agreement ſhould be made. The Archbiſhoprick of Magdeburg was to be held by Prince Auguſtus of Saxony for his life; and the Archduke Leopold William ſhould keep the Biſhoprick of Halberſtadt. A general amneſty ſhould take place from the year 1630, but that the affairs of Bohemia and the Palatinate ſhould be excluded. In a bye receſs, Luſatia was tranſferred to the Elector of Saxony, as his ſole property.

Little as theſe conditions of peace gratified the wiſhes and anſwered the expectations which had before been raiſed, moſt of the States were obliged, in the ſame year 1635, ſucceſſively to yield their

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aſſent to them. Thus the city of Frankfort on the Main, and ſeveral Princes and Counts aſſembled at Straſburg, acceded on the 4th of June, 1634; the city of Erfurt, July 6th; Duke William of Saxe-Weimar, July 20th; the Dukes of Mecklenburg, and Auguſtus and George Dukes of Brunſwick-Luneburg, July 29th; the joint Circle of Lower Saxony, Auguſt 13th; Hanſeatic Towns, Auguſt 26th; and the Elector of Brandenburg, Auguſt 27th. The Duke of Wurtenberg was not to enjoy any of the benefits of the peace; the convents, on the contrary, which were in his country, were again taken poſſeſſion of by Catholics; and the ſchools which had been inſtituted were all aboliſhed. The Margrave of Baden-Dourlach did not urge the ſmalleſt claim, but depended for ſuccour upon France. The Landgrave William of Heſſe-Caſſel entered into a negociation concerning accepting the peace; but it was long before the affair was brought to any concluſion.

CHAPTER

CHAPTER VII.

Last Scene of the Thirty-Years War in the Reign of Ferdinand II. and III.—From the Peace of Prague till the Peace of Westphalia. 1635—1648.

Rupture with France, and renewed succefs of the Swedifh arms—Diet of Ratifbon, and the Emperor's defign to feparate the States of the Empire from the two kingdoms—Obftacle raifed to this in a fingular manner by the publication of a book called *Hippolithus a Lapide*, as well as an important change produced by the death of the Elector of Brandenburg—Munfter and Ofnabruck agreed upon in the Recefs of the Empire of 1641, inftead of Cologne and Lubeck, as the places appointed for the meeting of the Congrefs—Preliminaries of the peace at Hamburg—Diet of Deputation—Progrefs and conclufion of the negociation of peace at Munfter and Ofnabruck.

IN the ftate of uncertainty in which the liberty of Germanic Empire and the Proteftant religion were left by the treaty of Prague, it was fortunate for both, that at this period France declared war againft the Spanifh Netherlands; and that, in confequence of a truce which was prolonged for twenty-fix years, between Sweden and Poland, by the intervention of France, on the 12th of September, 1635, the arms of Sweden were again fuccefsful. In the reign of Ferdinand III, after the year 1639, the Emperor's hereditary dominions were the theatre of war, and the arms of the grand army of Sweden every where fuccefsful. A. C. 1635.

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ſucceſsful. Duke Bernhard of Weimar was equally fortunate on the Rhine, and particularly in Alſace, where he was conſiderably aided by a treaty of ſubſidy, which the Crown of France had concluded with him October 27, 1635 (*a*). The fruits of this however were, that after his death the French claimed his conqueſts as their own, and therefore acted with more vigour in the further progreſs of the war.

Ferdinand III. now made an attempt to unite with all the States of the Empire, and employ their joint forces to drive both the foreign powers, France and Sweden, entirely out of Germany. In the year 1640, Ferdinand convoked a Diet at Ratiſbon, which had not been done ſince 1613, a period of twenty-ſeven years, in hopes that by this meaſure he might accompliſh his deſign. Wearied by the calamities of war, and carried away perhaps with the exaggerated idea of the relation in which the States of the Germanic Empire ſtood to their head, and the Majeſty of the Emperor, many of the States ſeemed by no means diſinclined to comply with the Emperor's wiſhes.

While the Diet was aſſembled at Ratiſbon, Banner, the Swediſh General, ventured, in the middle of the winter, to make an attempt to ſurprize the city; but this enterprize did not ſucceed to his wiſhes. The deſigns of the Emperor, however, were totally fruſtrated by the effect of a ſingle book; a book which deſerves on

(*a*) For further particulars ſee STRUVII *Corp. Hiſt. Germ.*

on that account a place in the Hiſtorical Developement of the Conſtitution of the Germanic Empire, as much as the hiſtory of many of the wars or treaties of peace. The author was Bogiſlaus Philip Chemnitz, whoſe father, Martin Chemnitz, a ſon of a celebrated Lutheran divine, was a privy counſellor, and chancellor firſt in Stettin, and afterwards in Sleſwic, from whom perhaps he had inherited materials which aſſiſted him in the compoſition. The early part of his life was devoted to ſtudy; but he afterwards ſerved in the Dutch and Swediſh armies. The book was written in Latin, on the real conſtitution of the Germanic Empire, and entitled "*De Ratione Status in Imperio noſtro Romano-Germanico.*" The Latin title was deſigned to expreſs what the French call *Raiſon d'Etat.* The grand object ſeemed to be, to deſtroy the idea entertained by the States, of the Germanic Empire being ſuch a continuation of the ancient Roman Empire, that the Juſtinian code of laws could be ſtill made uſe of, to repreſent the Empire of Germany as a monarchy ſimilar to that of Rome, and attribute the ſame majeſty and rights of ſupremacy to the Emperor Ferdinand, which were claimed by Juſtinian. According to this new publication, the government of Germany was conſidered as ariſtocratical, and the real majeſty of the Empire veſted more in the general Aſſembly of the States, than ſolely in the perſon of the Emperor.

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He not only explained the Germanic conſtitution in general upon ſuch principles as theſe, but

 entered

BOOK VI. entered into the particulars of the principal rights of ſupremacy, ſuch as the legiſlative power, and the rights reſpecting religion, war, peace, judicial proceedings, taxation, coinage, &c. Throughout the whole work he took the greateſt pains to place the falſe repreſentations of preceding writers and ſtateſmen, as well as the real defects of the conſtitution, and the cauſes which produced them, in their proper light. He then propoſes a method, how theſe might be remedied; and among other abominable propoſitions, he even breaks out, in the courſe of his work, in the following words: "Germany ought to "be united in the common cauſe, and take up arms "againſt the children of the deceaſed Tyrant (a name "he gives to Ferdinand II.): the people ought to "drive his whole family from the country, and con-"fiſcate his lands." At the concluſion he ſays, "Many whoſe hearts are not in the proper place, "will wonder that we take up our pen againſt the "Emperor himſelf; but we have long been ready, "not only to uſe our pen, but our ſword, ſo long as "a drop of blood flows in our veins, againſt a Houſe "which has proved ſo dangerous an enemy to our "native country, and the liberty purchaſed by our "anceſtors. We may be deprived of our life, but "we cannot be robbed of Heaven; and we ſhall "quit the world, free from the yoke of ſlavery," &c.

The firſt edition of this book appeared in the year 1640, at Stettin, in quarto, under the feigned name of *Hippolithus a Lapide*. The name of Chemnitz, in

in the Venedic language, ſignifies a ſtone; and Philip, by a ſmall alteration of the letters, was converted into *Hippolithus*. The real name of the author, therefore, was not ſo much concealed; but notwithſtanding this, few authors who have changed their names have remained ſo long unknown. In the years 1648 and 1653, he wrote an extenſive hiſtory of the war of the Swedes in Germany. Queen Chriſtina afterwards conferred the rank of nobility upon him, as Swediſh hiſtorian, and gave him an eſtate. He died in the year 1678.

The work above mentioned was immediately prohibited, and publicly burnt at Vienna; but there were ſeveral ſpurious editions of it publiſhed in Holland, which were pretended to be printed at Freyſtadt in 1647. Theſe were every where diſperſed, and read with eagerneſs, and perhaps with too great a degree of approbation. In the years 1712 and 1720, tranſlations of it appeared in French; and it was even publiſhed in German, in two octavo volumes, in 1761, with very ſevere remarks. Few literary productions have had ſo much influence in political affairs as this. At its firſt publication, its effects were immediately viſible on the deſign which the Emperor had, of rendering the former diſpoſition of the Imperial States ſubſervient to his intereſt, in oppoſition to the foreign powers, by making them more dependent upon the Imperial Court. Such was the effect of it, that it formed an epoch almoſt in the ſtudy of the public law of Germany. Both Princes and Elec-

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tors, as well as their Counſellors of State, began now to conſider themſelves in a different point of view; and the newly-adopted principles were imperceptibly tranſmitted from age to age.

To render all this of greater weight, nothing could happen more opportunely than the death of George William, Elector of Brandenburg, which happened November 21, 1640. This Prince, by means of his Miniſter the Count of Schwarzenburg, was become totally ſubſervient to the deſigns of the Imperial Court. The officers of his fortreſſes were even at the Emperor's command. The deſigns of Sweden, on the contrary, were conſtantly counteracted at Berlin, becauſe they ſeemed to have the reſervation of the Dutchy of Pomerania in view for themſelves, which, after the death of the laſt Duke Bogiſlaus, was, according to treaty, to devolve to the Houſe of Brandenburg.

Frederick William, the new Elector, who, though only twenty years old, acquired the ſurname of the Great, adopted very different principles. The firſt meaſure he purſued was to make himſelf maſter of his own fortreſſes, and free himſelf from all dependence on the Emperor's Court. He made ſuch terms, on the other hand, with Sweden, that if that Crown required any ſacrifice from the Houſe of Brandenburg, he might depend upon its aſſiſtance to procure himſelf a ſufficient compenſation, provided that the common cauſe of the liberty of Germany, and the Proteſtant religion, remained uninjured.

Thus

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Thus, the Diet which was opened in September, 1640, by Ferdinand III. in perſon, was concluded by a Receſs on the 10th of October, 1641, in which ſeveral things were inſerted by a majority of votes, agreeably to the Emperor's wiſhes; yet this Receſs was not attended with any permanent effect. Many of the articles were already drawn up contrary to the intentions of the Imperial Court; particularly concerning the place where the negociations of peace with the Crowns of France and Sweden were to be tranſacted. Ferdinand II. had already endeavoured to get the negociations with France tranſacted through the mediation of the Pope at Cologne; and thoſe with Sweden at Hamburg or Lubeck, through the mediation of Denmark. It did not ſeem practicable to open the Congreſs, which was to meet to conclude a peace, only at one place, on account of the various colliſions which were likely to ariſe between the Papal and Proteſtant ambaſſadors. Two places were propoſed at Vienna, at a conſiderable diſtance from each other, with a view to ſeparate the royal powers in the negociations, and conclude them with only one. The ambaſſadors from the Pope, the Emperor, and Spain, were already met at Cologne; but the French ambaſſador, the Count d'Avaux, preferred going to Hamburg, where there were already three from the Emperor, beſides John Salvius, from Sweden. Inſtead of Cologne and Lubeck, the places fixed upon for the two Congreſſes in the Receſs, were the cities of Munſter and Oſnabruck, which were only a few miles

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from each other. This point likewiſe was obliged to be complied with, that the Imperial States might attend the negociations either individually or in a body, and that a Deputation Diet ſhould be held for the redreſs of the complaints of the States, reſpecting the adminiſtration of juſtice.

The preliminaries of the peace were ſettled upon theſe terms on the 25th of December, 1641, in which the Imperial ambaſſador, Von Lutzow, agreed with the ambaſſadors of France and Sweden concerning the exchange of the ſafe-conducts; and the commencement of the negociations for a general peace was fixed for the 25th of March, 1642, at Munſter and Oſnabruck. The Swedes, however, were obliged to procure the ratification of theſe preliminaries by another victory; and thus ſeveral years elapſed, till after a variety of viciſſitudes of the fortune of war, moſt of which, upon the whole, were in favour of the two Crowns, Ferdinand III. was at laſt obliged to give his conſent to the articles of peace, as they were finally agreed upon, after infinite trouble, at Munſter and Oſnabruck.

The deputation reſolved upon in the Receſs of 1641, met in May 1643, and ſettled many things which concerned the internal conſtitution of the Empire; and particularly ſeveral improvements, and more accurate proceedings, in the adminiſtration of juſtice. The two Congreſſes for the peace, in Weſtphalia, were opened on the 10th of April, 1645; and after the great

great agitation occasioned by the propositions which were made in the name of the royal powers on the 1st of June, they began to act with vigour November 19, 1645. At last, the Count of Trautmannsdorf, the Emperor's first Minister of State, attended the Congress: but it was necessary to accomplish almost every measure throughout the negociation by means of some fresh military operation; till Prague was surprised by the Swedish army, which gave the business its proper energy. CHAP. VII.

BOOK VII.

Fourth Period of Modern Hiftory.

FROM THE PEACE OF WESTPHALIA IN 1648.

CHAP. I.

Negociations for Peace with the United Netherlands, and with Swifferland—Other Powers, viz. Spain, Portugal, and Lorraine, excluded from the Peace.

Peace between Spain and the United Provinces—Its effect with refpect to the Germanic Empire—Negociations for the peace between Spain, France, and Portugal, broken off; as well as between France and Lorraine, though thefe powers were included as allies of the different parties in the peace of Ofnabruck—Independence of Swifferland allowed.

A. C. 1648. PEACE was concluded between the Crown of Spain and the United Provinces, on the 30th of January, 1648. The latter were acknowledged independent of the former, and kept poffeffion of all their conquefts in the Netherlands, as well as in the other quarters of the world, Afia, Africa, and America. With refpect to the Eaft Indies, it was fettled that the Spaniards fhould not extend their naviga-

navigation any further in thoſe parts; neither ſhould the ſubjects of either viſit or carry on any trade with the poſſeſſions of each other in the Eaſt or Weſt Indies; that the Scheld, and the outlets of other rivers to the ſea, ſhould no longer be open to the Spaniſh Netherlands. On the other hand, that the German Hanſeatic Towns in the Spaniſh Netherlands, and the United Provinces, ſhould reciprocally enjoy the liberty of commerce with each other. CHAP. I.

By the independence of the United Provinces, which was now acknowledged, all the rights of ſupremacy formerly claimed by the Germanic Empire were naturally diſſolved. The Empire took no part in the peace itſelf. The Spaniſh Monarchy was obligated by the fifty-third article, to procure the continuation and due obſervance of neutrality, friendſhip, and good neighbourhood, on the part of the Emperor, in the ſpace of two months, and on the part of the Empire in the ſpace of two years. This declaration was made by the Emperor, July 6, 1648 (*a*); and in conſequence of a motion made by the Emperor on the 16th of Auguſt, 1653 (*b*), after the deliberations of the Diet February 18, 1654 (*c*), a formal decree of the Empire was paſſed on the 22d of March the ſame year (*d*). The

(*a*) LONDORP, *Acta Publica*, Tom. VI. p. 343.
(*b*) MEIER, *Acta Comitial.* Tom. I. p. 407, 408.
(*c*) MEIER, ibid. p. 480.
(*d*) LONDORP, Tom. VII. p. 603,—JO. L. B. DE MEERMANN, Diſſ. *de ſolutione vinculi, quod olim fuit inter S. R. I. et Fœderati Belgii Reſpublicas.* Lugd. Bat. 1774.

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The States of the United Provinces, however, long before this, when they were left defenceleſs by the Empire, during the hardſhips which they ſuffered from the Spaniſh government, had, on their part, renounced all connexion with Germany. Even Ferdinand II. addreſſed them no longer as "Dear and Faithful." They were not even ſatisfied with the addreſs commonly uſed to the Venetians, "*Illuſtriſſimi*;" but inſiſted on the title of "*Celſi et Potentes Domini*," and "*Veſtra Celſitudo* (*a*)." Since that time, the United Provinces, like other European powers, have ſent ambaſſadors to the Germanic Empire; and, in fact, rendered the actual acknowledgement of their independence ſuperfluous. By this event, the Circle of Burgundy, as fixed by treaty in the year 1548, during the reign of Charles V, ſuffered a conſiderable loſs. That part of the Netherlands, which afterwards continued under the Spaniſh power, was included indeed in the treaty; but the quota paid to the contingencies of the Empire at preſent in behalf of the Circle, was ſettled by a later regulation.

Beſides the affairs which the Spaniſh Monarchy had to ſettle with the United Provinces, that Crown was ſtill to be reconciled with France and Portugal, and France with Lorraine. All the negociations which were commenced for this purpoſe proved abortive; ſo that theſe diſputes, that the other articles of peace might not be delayed, were obliged to be left as

(*a*) Meerman, l. c. § 56, 57. p. 102, 105. § 71. p. 123.

as they were, and the war therefore between thoſe powers continued as before. Spain, on this account, could take no part in the peace which was concluded at Munſter between the Emperor and France. In the Peace of Oſnabruck, however, Art. xvii. § 10. the King of Spain was included among the Emperor's allies; and England, Denmark, Poland, Portugal, Ruſſia, Lorraine, Venice, the United Provinces, Swiſſerland, and Tranſylvania, were all expreſsly mentioned. The Swiſs, who, on account of their independence, claimed a part in the negociations of the Peace of Weſtphalia, fully accompliſhed their deſigns. They had already obtained their independence in the reign of Maximilian I.; but it was not ſettled by any articles of peace, and the Imperial Chamber continued occaſionally to iſſue its decrees againſt them. To prevent this, they had obtained a declaration from the Emperor, with conſent of the Empire, in their favour, on the 14th of May, 1647, that they were in full poſſeſſion of their independence, and no longer ſubject in any reſpect whatever to the Imperial courts of judicature. This was again ratified in both treaties of peace; in the ſixth article of the Peace of Oſnabruck, and the eighth of that of Munſter, and both in equivalent terms. By this circumſtance, therefore, the Germanic Empire was prevented from recovering the loſs, on that ſide of its dominions, which it had long before ſuffered by the riſe of the kingdom of Burgundy. The words of the Peace were ſo expreſſed,

CHAP. I.

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preſſed, that the city of Baſil and all Swiſſerland, or the city of Baſil and the other Cantons of Swiſſerland, were mentioned particularly. The Biſhop of Baſil was not included, but continued, as formerly, one of the States of the Empire.

CHAPTER

THE TAYLOR INSTITUTION

CHAPTER II.

Negociations respecting the Indemnification of the Crowns of Sweden and France, and the Demands made by those Powers for Compensation.

General and particular contents of the treaties of peace concluded at Munster and Osnabruck—Indemnification required by Sweden, in territories, and some extraordinary prerogatives—Indemnification of the Houses of Brandenburg, Mecklenburg, and Brunswick-Luneburg—The House of Hesse-Cassel particularly favoured—Compensation granted to France.

THE articles of peace, both of Munster and Osnabruck, were in general so drawn up that the former contained the particular conditions proposed by France, and the latter those of Sweden. Other things, however, which were supported by both powers in the course of the negociations, were inserted in equivalent terms in both. The peace of Osnabruck was finished before that of Munster; upon which the French Minister went over to Osnabruck, that he might not lose any advantage: but the instrument of the peace of Osnabruck was laid aside till that of Munster was entirely completed, that both might be signed on the same day, Oct. 24, 1648.

Nothing

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Nothing was of more immediate consequence, both to France and Sweden, than the demands which they made for the expences of the war, and further compensation; as they thought, by the fortune of war having proved in their favour, it would be considered that they had been under the necessity of undertaking an equitable war by hardships which had been illegally imposed upon them. The Swedes at first required the Dutchy of Pomerania, together with several Archbishopricks and Bishopricks, to be secularized in their favour, and even the Dutchy of Silesia. As it was easy to foresee the difficulties which would arise, with respect to secularization on the side of all the Catholics, it must have created no small degree of surprise, when the Imperial Court at last consented to the secularization, rather than make any sacrifice of the Emperor's own patrimonial dominions. The other demands of Sweden, therefore, were at last fortunately complied with, that the former demand of a part of the Emperor's patrimony might be withdrawn. Thus Sweden first got the whole of Upper Pomerania, and the island of Rugen, together with the under-mentioned places in Lower Pomerania; Stettin, Garz, Dam, Golnau, the island of Wollin, with the new harbour and places belonging to it, Peine, Schweine, and Divenau: secondly, the city of Wismar, with the harbour and every thing appertaining to it, as possessed by the Dukes of Mecklenburg: and, thirdly, the Archbishoprick of Bremen, and Bishoprick of Verden, both to be converted into secular countries, and their chapters and foundations abolished.

The

The Swedes did not require that these lands should be totally separated from the Germanic Empire, neither did they wish to possess them independently. They were to remain as fiefs of the Empire; and the King of Sweden was in future to consider himself as an Imperial State, and enjoy a seat and vote at the Diets of the Empire and Circle, both on account of Bremen and Verden, as well as Upper Pomerania, together with all the rights and privileges thereunto annexed. On the other hand, conditions were made for the preservation of the liberties of the cities of Bremen, Wismar, and Stralsund, and all the other Hanseatic towns, as they formerly enjoyed them. The Crown of Sweden, however, reserved one privilege in the conditions, viz. that of founding an university, and receiving all the tolls and duties already established.

But, as there was still an apprehension remaining, that the Imperial Court might retaliate on the Crown of Sweden, whenever the King, as possessor of these countries, should be involved in a law-suit at the Imperial courts of judicature, and particularly before the Aulic Council, Sweden added this privilege to the terms which were proposed, that in future, if any action should be brought against that King in the Imperial courts of judicature, on account of the lands in his possession in Germany, it should be left to his choice, as defendant, Whether the cause should be submitted to the Aulic Council or to the Imperial Chamber? which before was wholly at the

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the option of the plaintiff; and that every plaintiff ſhould firſt apply for his determination. After this, an unlimited exemption from appeal was granted to all the countries of the King of Sweden in Germany, that in future there ſhould be no appeal whatever from thoſe lands to the Imperial courts of judicature; but, that the ſubjects ſhould not in future have a legal reſort leſs than they had before, a particular High Court of Appeal was to be eſtabliſhed in ſome convenient place for all the Swediſh lands in Germany; which afterwards took place at Wiſmar.

As the Houſe of Brandenburg had an incontrovertible right to Pomerania, and could not therefore be expected to make that ſacrifice alone for the ſatiſfaction of Sweden, which was required from the Empire in general, this part of the indemnification naturally occaſioned a demand of compenſation or reimburſement from the Houſe of Brandenburg, which the Crown of Sweden ſupported in the negociations for peace with all its power. The Elector required for himſelf the Archbiſhoprick of Magdeburg, and the Biſhopricks of Halberſtadt, Minden, Oſnabruck, and Munſter, ſecularized, and then inſiſted, after the example of Sweden, upon having a part of the Emperor's hereditary dominions, viz. the Principalities of Glogau and Sagan in Sileſia. After a variety of remonſtrances and troubleſome negociations, it was at laſt ſettled, that the Elector of Brandenburg ſhould have the Biſhopricks of Halberſtadt, Minden, and Camin, as ſecular Principalities, and

the Archbishoprick of Magdeburg converted into a Dutchy. The latter, however, continued in the possession of Prince Augustus of Saxony as long as he lived, who held it already in the quality of administrator. After his death, which happened in the year 1680, the Elector succeeded to the actual possession of it.

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Among the places granted for the indemnification of Sweden, the Duke of Mecklenburg was obliged to give up the city of Wismar. By way of compensation for this, that Prince received the Bishopricks of Schwerin and Ratzeburg as secular Principalities, and Mirow and Nemerow, commanderies of the Order of St. John.

Some of the Princes of the House of Brunswick-Luneburg had been already appointed coadjutors in the Archbishopricks of Magdeburg and Bremen, and the Bishopricks of Halberstadt and Ratzeburg. By the secularization and cession of those countries they lost their expectations and rights. For their reimbursement it was settled, that the succession to the Bishoprick of Osnabruck should be alternately vested in a Catholick Bishop and a younger Prince of the House of Hanover. The convents, likewise, of Walkenried and Gröningen were transferred to the House of Brunswick; and besides this, though it was not inserted in the peace itself, yet an Imperial privilege was at the same time granted to this House, which was procured by the negociations, that in a case

 of

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of law, when they were the party accuſed, they ſhould have the ſame choice as the King of Sweden, of the two tribunals in the Empire.

The Houſe of Heſſe-Caſſel had no claims to make for ſatisfaction, or compenſation as it was called, becauſe it had given nothing up, either to Sweden or to any other power; but the Landgrave William V, to whom his father Maurice had reſigned the government in the year 1627, was the firſt among the German Princes who entered into an alliance with King Guſtavus Adolphus; and his widow Amelia Elizabeth, a Counteſs of the Houſe of Hanau Münzenberg, had continued this alliance ſince the year 1637, when her huſband died, during the guardianſhip of her ſon, William VI, who was born 1629, with ſuch firmneſs and prudence, that ſhe now met with particular ſupport from the Crown of Sweden (*a*). In ſhort, the Houſe of Heſſe was the only one of all the States of the Empire, which, without any particular reaſon to alledge for receiving compenſation, was ſo ſucceſsful, that a ſpiritual Principality was purpoſely ſecularized, and that Houſe put in poſſeſſion of the princely Abbey of Hirſchfeld, as a ſecular dominion.

For

(*a*) The French Ambaſſador, the Duke de Longueville, ſaid on this occaſion to the other Ambaſſadors: "Madame la Landgrave "m'a fait tant de politeſſes, qu'il me faut confeſſer que je ne "parle qu'avec quelque paſſion pour elle. Il faut faire beaucoup "aux faveurs d'une dame ſi vertueuſe comme eſt Madame la Land-"grave. Pour quoi, Meſſieurs, ſurmontez vous-mêmes, et donnez "toute ſatisfaction à Madame."—ADAMI *de Pacif. Oſn. Monaſt.* Lipſ. 1737. P. 525.

CHAP. II.

For the ſatisfaction of France, that Crown obtained, in the peace of Munſter, firſt the entire ſovereignty of the Cities and Biſhopricks of Metz, Toul, and Verdun, as it had been in poſſeſſion of them from the year 1552, but without their having been formally given up by the Emperor and Empire; at the ſame time this reſervation was made, that the three Biſhops ſhould remain ſuffragans to the Archbiſhop of Treves. Beſides this, France obtained the ſovereignty of Pignerol, and the right of keeping a garriſon in Philipſburg; and, laſtly, the Landgraviate of Alſace, and every thing which the Houſe of Auſtria formerly poſſeſſed there, for which the Archduke Ferdinand Charles, who had been in poſſeſſion of this Landgraviate, was promiſed three millions of livres as a compenſation from France. The connexion of the Biſhops of Straſburg and Baſil, the Imperial city of Straſburg, together with ten other Imperial cities, which belonged to the Provoſtſhip of Hagenau, the Abbies of Murbach, Luder, Andlau, and Gregorienthal, the Counts Palatine of Lutzelſtein, the Counts and Lords of Hanau, Fleckenſtein, Oberſtein, and the free Imperial Nobility in Lower Alſace, with the Germanic Body, and their immmediate dependence on the Empire, were at the ſame time expreſsly reſerved.

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CHAPTER III.

Negociations concerning the Amneſty.

Difficulties reſpecting the amneſty—which the Emperor would only allow to commence from the year 1630 or 1627, but was afterwards obliged to conſent to the year 1618—but with particular exceptions reſpecting the confiſcated eſtates in his hereditary dominions—as well as with reſpect to the reſtitution of the Palatinate—and various other caſes particularly mentioned.—Singular deciſion of the diſputes of the Houſe of Heſſe—The affairs of Juliers and Donawerth left undecided.

AMONG the other demands occaſioned by the war, the moſt natural was a general amneſty, which both Crowns required for themſelves, and all their allies, except thoſe who were expreſsly excluded, as the common rule is, in all articles of peace; and therefore, a thorough reſtoration of every thing to the ſtate it was in previous to the commencement of the war in the year 1618. The Imperial Court was a long time before it would accede to ſuch an amneſty as this; becauſe not only a perfect reſtoration of the Palatine Houſe depended upon it, but the reſtoration of many confiſcated eſtates in his hereditary dominions, which Ferdinand II. had taken poſſeſſion of, during the diſturbances in Bohemia, and moſt of which he had diſpoſed of to his other favourites.

Ferdinand

Ferdinand III, at the Diet held at Ratifbon, Auguft 20, 1641, had, on this account, very confiderately promulgated a general amnefty, as it was called, " That all States which remained unreconciled, if they were inclined to be upon friendly " terms with the Emperor, however the varied fate " of war might turn out in future, fhould expect a " perfect reftoration of their fecular eftates, reckon" ing from 1630, and the fpiritual ones from No" vember 12, 1627, but with the exclufion of the " States and fubjects in the Emperor's hereditary do" minions, as well as the affair of the Palatinate, and " other grievances, which were referred to feparate " treaties." And this very limited amnefty was repealed in the Recefs, which the Emperor procured by a majority of votes October 10, 1641. After the moft troublefome negociations, it was at laft decided, that it fhould be eftablifhed as a general rule, that whatever was brought into diforder during the courfe of the war, by hoftile or violent means, fhould be fully reftored to the fame ftate in which it was before the war began.

As the Imperial Court, however, would not by any means confent to the reftoration of the abovementioned confifcations, and the two Crowns, on the other hand, thought it unjuft that fuch who belonged to the Emperor's hereditary dominions, and had entered into their fervice, fhould for that reafon forfeit their eftates; a middle way was at laft adopted on this point, that the latter fhould recover their eftates again,

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provided they were confiscated after the time when they had entered into the service of either of those powers, but not if it was done before.

With respect to the restitution of the Palatinate, so much was given up, that the ancient Electoral dignity of the Palatinate remained with the Duke of Bavaria, together with the Upper Palatinate, and the county of Cham. On the other hand, a new and eighth Electorate was established for the Lower Palatinate, to continue till the extinction of the other House; so that, in case of the extinction of the Wilhelmine line of Bavaria, the Bavarian Electorate and the Upper Palatinate should revert to the Palatine House of Rudolphus. In other respects this Electorate in the Lower Palatinate was restored, together with all its dependencies, spiritual and secular estates and prerogatives, by the general amnesty, to the state it was in before the commencement of the disorders in Bohemia. The other claims made by this House, either active or passive, were settled likewise by particular ordinances.

Thus, likewise, according to the principles of the amnesty, the Dukes of Wurtenberg, the Margrave of Baden-Dourlach, the Duke of Croy, the Houses of Nassau, Hanau, Solms, Isenburg, Rheingrafen, Sain-Hachenburg, Falkenstein, Waldeck, Oettingen, Hohenlohe, Löwenstein, Erbach, and certain private persons there mentioned, whose particular disputes were in some measure particularly decided, were

restored to their former state, without exempting those, however, who were not expresly named, from their right of partaking of the general amnesty.

As to the particular disputes which arose before the commencement of the thirty-years war, and which might in some respects be considered as the cause of it, those of the House of Hesse were the only ones which were decided in the peace; or rather, the treaty which had been concluded at Cassel, April 14, 1648, between Hesse-Cassel and Hesse-Darmstadt, concerning the Marburg succession, was confirmed by the peace, as much as if it had been inserted word for word; as well as the treaty of Hesse-Cassel with the House of Waldeck, concluded April 11, 1635, and ratified by Hesse-Darmstadt, April 14, 1648; together with the right of primogeniture, introduced both in the Line of Cassel and Darmstadt, and confirmed by the Emperor. The affair of the succession of Juliers, on the contrary, remained undecided, and was referred to be settled by arbitration, or by law, at some future period; and the restoration of the city of Donawerth was, in like manner, referred to the decision of the succeeding Diet.

CHAPTER IV.

Negociations reſpecting the Religious Grievances.

The grievances of the States of the Empire a grand object of the peace, on which account, in fact, the war was carried on—Grievances which were political as well as religious, the latter of which only were treated of in the Peace of Oſnabruck—General confirmation of the Religious Peace, including the Calviniſts—Relation between the Lutherans and Calviniſts determined—The examples of Brandenburg, Zerbſt, and Hanau, chiefly in view—The year 1624 fixed as a definitive epoch between the Catholics and Proteſtants, particularly with reſpect to the religious foundations and ſpiritual juriſdiction—Other juriſdiction and all dioceſan rights over the Proteſtants again totally aboliſhed—Determination likewiſe reſpecting religious exerciſes and private worſhip, excepting in the hereditary dominions of the Emperor—Particular mention of the free Nobility or knighthood of the Empire—State of religion fixed in the Imperial cities—A very great inequality of religions occaſioned by this circumſtance in particular States of Germany—A perfect equality of the two religions fixed with reſpect to the Empire in general, or at leaſt that in caſes where the two parties differed in opinion, the majority of votes ſhould be of no avail, but be ſettled by an amicable accommodation, whether the queſtion related to religious affairs or not; but not that the three religions ſhould have reciprocal rights among each other—No inference can be drawn, from the relation of the Lutherans and Calviniſts, for the Catholics and Proteſtants—Other religions not included.

THE grand object of the negociations of peace, which in fact was the real occaſion of the war, conſiſted in the grievances of the Germanic States,

partly with reſpect to the ſtate of religion, and partly the political conſtitution of the Empire. The former was treated of by Sweden alone, in the peace of Oſnabruck; the grievances which were merely political were ſettled both by France and Sweden, and equally inſerted in both treaties of peace.

As far as religion was concerned, the firſt thing was, that the Treaty of Paſſau, and the Religious Peace of the year 1555, were again confirmed in the fulleſt manner, that no remonſtrance which might be made in future, ſhould be of any avail againſt them. By this, the inſinuations, particularly in the writings of the Jeſuits, againſt the validity and permanent obligation of theſe fundamental laws, were removed for ever. As a particular doubt aroſe, whether the Calviniſts could be conſidered as adherents to the Confeſſion of Augſburg, and be included in the Religious Peace; this queſtion was reſolved, likewiſe, fully in favour of the Calviniſts.

The relation which might become a ſubject of debate between the Lutherans and Calviniſts, or had already been diſputed, was in like manner ſettled by a particular article. Whatever was ſettled before the peace, by treaties or in any other manner, was left as it was. For the future, however, the particular caſes where a Lutheran or Calviniſt Sovereign ſhould leave one of thoſe religions for the other, or where the ſucceſſor ſhould profeſs another religion, were accurately determined. In both caſes, the

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the Sovereign ſhould not only have a right to eſtabliſh the worſhip of God at his reſidence, according to his own religion, but allow the ſame liberty of exerciſing the religious rights to all thoſe in his country who were of his own perſuaſion: yet, notwithſtanding this, that nothing ſhould tend to the prejudice of the other religious party, whoſe public worſhip, conſiſtory, and the whole ſtate of their church and ſchools, ſhould remain unaltered.

According to this rule, the Electoral Houſe of Brandenburg, which embraced the Calviniſt religion in 1613, and in the year 1680 got poſſeſſion of the Dutchy of Magdeburg, which, till that time, had had a Lutheran Sovereign, had a right to eſtabliſh the Calviniſt worſhip in the reſidential city, as it is called, of Halle, but the other churches in the town continued Lutheran; and in the year 1697, when an Univerſity was founded there, the profeſſors of divinity and philoſophy who were appointed, were all of them Lutherans. In the countries of Zerbſt (*a*) and Hanau (*b*), great revolutions had taken place previouſly

(*a*) Among the ſons of Joachim Erneſt, Prince of Anhalt, who had embraced the Proteſtant perſuaſion, and died in the year 1586, Prince Rudolphus, of Anhalt Zerbſt, died in 1622, and left his widow, Magdalen, who was born a Counteſs of Oldenburg, a Lutheran. This Princeſs ſuffered her ſon John (born in 1621) to be brought up in that perſuaſion by her brother. This was the cauſe of the change which took place in the country of Zerbſt, in favour of Lutheraniſm.

(*b*) The line of Hanau Münzenberg, in which Count Philip Lewis was a Calviniſt, was extinct in 1642. Count Frederick Caſimir,

previouſly to the Peace of Weſtphalia, in favour of the Lutheran religion; and there the Peace made no alteration. CHAP. IV.

It was otherwiſe ſettled between the Catholics and Proteſtants. A number of difficult queſtions aroſe here, in which a union of the two parties, or a deciſion of what was right or wrong, could not be expected. Certain religious principles in general intervened, where one party always thought they could not yield to the other, without injuring their conſciences. In this ſituation of affairs it was a fortunate circumſtance, that a method was adopted, without there being any neceſſity for entering at all into the queſtion, Who was right, and who was not?

In the caſe, for inſtance, of the amneſty, when ſo many various inquiries and negociations took place concerning the queſtion, From what year the amneſty ſhould be enforced? an idea at laſt occurred, whether the redreſſing of the grievances in religion might not be ſettled according to the ſtate of affairs in a certain year, ſo that a certain epoch might be fixed upon how the affairs ſtood exactly at that period, without there being any neceſſity for one party to yield, in any reſpect, to the other, in queſtions of law, or principles of religion.

Caſimir, of the line of Hanau Lichtenberg, who ſucceeded, was a Lutheran, and made many alterations in Hanau in favour of his own religion.

MAHARAJA SERFOJI'S SARASVATI MAHAL

Thus

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Thus the Emperor had already inſerted, in the above-mentioned ſo-denominated general amneſty, of the 20th of Auguſt, 1641, that a reſtitution of ecclesiaſtical eſtates ſhould take place from the 12th of November, 1627. The Proteſtants inſiſted upon going back to the commencement of the war, in the year 1618. By the mediation of the Count of Trautmannſdorf, the Catholics agreed to fix the definitive year, by receding from 1627 to 1626 or 1625. The Proteſtants, on the other hand, advanced from 1618 to 1620, 1621, 1623; till at laſt the matter was compromiſed, by both parties agreeing to adopt 1624, and, wherever it was practicable, the firſt day of that year, as the definitive epoch.

According to this definitive year the future fate was now to be determined of all eccleſiaſtical foundations. The foundations, indeed, concerning which particular agreements had been made in favour of the King of Sweden, or his allies, were not ſubject to this deciſion; but all other immediate foundations were, for ever, to remain in the ſtate in which they were, with reſpect to religion, on the 1ſt of January, 1624, whether they were then in the actual poſſeſſion of Catholics or Proteſtants (*a*). By this method

(*a*) The only immediate Biſhoprick which the Proteſtants continued in poſſeſſion of, by virtue of this Article, was that of Lubeck, where, at the time of the peace of Weſtphalia, John, Prince of Holſtein-Gottorp, was Biſhop. The Chapter of Lubeck made a treaty with this Prince on the 6th of July, 1647, that after him and

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method the former diſpute concerning the eccleſiaſtical reſervation was finally decided, that, if the incumbent of an eccleſiaſtical office changed his religion, he ſhould abandon the office, and another perſon of the ſame religion which he had left, be appointed in his place. For all mediate convents, or other foundations, with their dependencies, the actual ſtate alone in which they were, with reſpect to the poſſeſſion of them on the 1ſt of January, 1624, ſhould be conſidered as a perpetual and the only rule.

Even the exerciſe of the ſpiritual juriſdiction was ſo far determined, according to this definitive year, that the epiſcopal dioceſan rights over Catholic ſubjects of Proteſtant States, both in extenſive territories and Imperial cities, ſhould only continue where it was already exerciſed in the year, 1624; according to which ſtate of poſſeſſion the ſpiritual juriſdiction, in collecting the revenues of Catholic foundations, ſhould be regulated in Proteſtant countries. That Proteſtant ſubjects, on the other hand, of Catholic States, ſhould be ſubject to the Catholic eccleſiaſtical juriſdiction only, according to the ſtandard of

and this preſent coadjutor the ſix next ſucceeding Biſhops ſhould be elected from the Houſe of Holſtein-Gottorp.—Lunig's Imperial Archives, part. ſpec. Vol. I. p. 551. Imhof. *Notitia Procerum Imperii.* Lib. I. cap. 23. § 6. p. 196. Proteſtant Chapters indeed remained at Miſnia, Merſeburg, Naumburg, Brandenburg, and Havelberg; but the Biſhopricks, the immediacy of the three firſt of which was conteſted by the Houſe of Saxony, and the two laſt by the House of Brandenburg, were at the time of the definitive year already in the poſſeſſion of Princes of thoſe Houſes.

of this definitive year, at the ſame time always with this proviſo, that nothing ſhould be exacted contrary to the Confeſſion of Augſburg, or againſt their conſciences; and that, if in the year 1624 they were in poſſeſſion of their own conſiſtory, they ſhould continue to have one.

In other reſpects, not only the ſpiritual juriſdiction, in the confined ſenſe, which ſome in their explanation of the Religious Peace would attribute to it, but the entire diocesan rights, and all ſpiritual juriſdiction of every kind over Proteſtant States and their ſubjects, among Catholics and Proteſtants, as well as among Proteſtants alone, were totally aboliſhed; and it was further expreſsly added, that dioceſan rights, and ſpiritual juriſdiction, ſhould be limited to the borders of the reſpective countries. This decided a point of the utmoſt importance, becauſe Catholic Biſhops, after the Religious Peace, frequently claimed rights in the adjoining Proteſtant countries, which they pretended were not comprehended in the ſpiritual juriſdiction, which the Religious Peace had aboliſhed, but among other objects of their dioceſan rights. But both the Proteſtant States and their ſubjects were now perpetually ſecured from ſuch claims in future.

With regard to the queſtion, which was afterwards ſuch a diſputed point between the two religious parties, What meaſures were to be adopted concerning the religious worſhip of the Proteſtant ſubjects of Catho-

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lic Sovereigns? it was reſolved, that ſuch ſubjects who were in poſſeſſion of the liberty either of public or private worſhip, in any part of the year 1624, ſhould reſerve the ſame, with its appurtenances. In ſuch places, where they had no religious worſhip in the year 1624, they ſhould be left at liberty to remove out of the country, or it ſhould be in the power of the Sovereign to order them to quit his territory; but in this caſe the ſubjects, whether they profeſſed the Proteſtant religion before the peace of Weſtphalia, or embraced it afterwards, ſhould be allowed the term of five or three years for removal; and no exorbitant deduction ſhould be made from their property, nor the neceſſary teſtimonials nor credentials denied them; nor any reſtriction on the liberty of diſpoſing of their eſtates by ſale, of entruſting them to the management of others, nor any obſtacle be laid in the way, to prevent their free ingreſs and egreſs for that purpoſe.

Where neither the compulſive nor voluntary removal of ſuch ſubjects came in queſtion, even in thoſe places where they had no religious worſhip in the year 1624, it was agreed that they ſhould be quietly tolerated, and that they ſhould be left unmoleſted in their domeſtic devotion, or be at liberty to attend public worſhip in ſome neighbouring place; that in the ſame manner they ſhould be at liberty to ſend their children to ſchools in other countries, or educate them privately; that neither Catholic nor Proteſtant ſubjects ſhould meet with any inſult whatever, nor be excluded from

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the benefits of civil ſociety and common rights, nor be denied an honourable burial; but that they ſhould always conſider each other as fellow-citizens.

The Emperor, as far as related to his own hereditary dominions, would not ſuffer himſelf to be further reſtrained, than that the Dukes of Brieg, Liegnitz, Munſterberg, and Oels, as well as the city of Breſlau, ſhould be allowed their former exerciſe of the Proteſtant religion; and that, beſides theſe, the Proteſtants in Sileſia ſhould be allowed to build three new churches at Schweinitz, Jauer, and Glogau, and not be under any compulſion to quit the country. Conditions were likewiſe made by Sweden, and the Proteſtant States of the Empire, that they might ſtill be at liberty to make interceſſion, or prefer petitions, in future, for the further religious freedom of thoſe who were of the ſame perſuaſion.

The immediate Imperial Nobility procured the ſame rights, with reſpect to their eſtates and ſubjects, as ſettled by the States of the Empire. (In the capitulation at the ſucceeding election, where the queſtion related to the rights of a Sovereign over his ſubjects, they were, for this reaſon, moſtly included in a particular parentheſis.)

Among the Imperial cities a diſtinction was at laſt made between ſuch as were purely Catholic, or purely Proteſtant, and thoſe which were of a mixed religion. Thoſe cities were declared to be purely Proteſtant,

Proteſtant, where no other religious worſhip was introduced by the magiſtracy and citizens, whether the government was veſted ſolely in the hands of the former, or jointly with the latter, according to the different conſtitutions, in the year 1624, notwithſtanding there might be ſeveral individual Catholic inhabitants, or one or more convents or other foundations there, with their reſpective churches. CHAP. IV.

The only Imperial cities named, in which there was an equal proportion of both religions, were Augſburg, Dunkelſpühl, Biberach, Ratiſbon, and Kaufbeuern. In the internal conſtitution of theſe, almoſt a perfect religious equality was ordered in the appointment to all the magiſterial offices; or where there was only a ſingle office, that the two religions ſhould be preferred alternately. With regard to Augſburg likewiſe, it was expreſsly determined, that the majority of voices in affairs which had any ſort of influence upon, and either directly or indirectly concerned religion, ſhould be of no validity.

Of the other Imperial cities, which could not be conſidered as mixed, there were only thirteen which the definitive year determined to be purely Catholic. The number of Proteſtant Imperial cities was incomparably greater: of theſe, there were thirty-three; and moſt of them, beyond compariſon, of greater power and conſequence.

 Thus,

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Thus, both according to the decision of the definitive year, and the other prescriptions of the Peace of Westphalia, the relation in which those who professed the Catholic religion stood to the Protestants, not only in the Emperor's hereditary dominions, but in all the other States of Germany, was exceedingly different, whether the Catholic or the Protestant religion was predominant alone, or whether the two religions were established in a greater or less equality. The Protestant party made several propositions in the negociations of peace, that it might be left entirely to the option of every inhabitant and burgher of each particular country and Imperial city, to choose which of the two religions he would; but the Catholics, so far from giving their consent to this, insisted that it should be the duty of every subject, in most of the Catholic countries, to swear to his religion before he could be admitted to take an oath of fealty and homage, or any oath of service *.

Thus, I say, the state of the two religions in the particular States of Germany was, and continued to be, very different. Sometimes one might be considered as predominant, and sometimes the other: the places where an equality of religion prevailed were

* Lehnseid, Huldigungseid, Diensteid.——The Lehnseid is the oath taken by a vassal, of fealty to his Lord; the Huldigungseid, of allegiance or homage to the Sovereign; and Diensteid, upon entering into any office of trust, or service.

were few. Ought, therefore, the Catholic perſuaſion to be conſidered as the predominant religion of the whole of the Germanic Empire, and Proteſtantiſm only tolerated, like the religion of the Jews? This was, no doubt, the idea of the Jeſuits, and thoſe who were ſeduced by their principles: they would not allow even the Religious Peace, at beſt, to be any thing more than a promiſe of ſecurity to the Proteſtants, in the ſame manner as in ſome countries protection is granted to Jews. They would not admit the idea, that the Germanic Empire, conſidered upon the whole, was of a mixed religion, and that one religious party was equal to the other; though they might as well conſider all Swiſſerland as a purely Catholic State, or the Catholic religion as predominant, becauſe out of the thirteen Cantons, four only are Proteſtant, ſeven Catholic, and two mixed.

The Emperor, with reſpect to his own perſon, certainly was, and remained a Catholic; neither was it ſettled, which might perhaps have been thought of, that there ſhould alternately be a Catholic and a Proteſtant Emperor. It was, however, by no means determined by law, that the Emperor could never be a Proteſtant; and at all events, the circumſtance of the Emperor's remaining perſonally a Catholic, could never decide the ſtate of religion for all the Germanic Empire. In ſuch a compound body of States, the queſtion might perhaps rather be decided by the relative power of the particular States, of which Germany conſiſts.

 Here,

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Here, either the number of inhabitants might be reckoned, or the importance of the country with reſpect to its revenues, military ſtrength, and even its contributions to the contingencies of the Empire, be adopted as a ſtandard; and it is doubtful which ſide the balance would be in favour of. Even with reſpect to the number of votes of the States, thoſe of the Electors had hitherto been equal; and among the Imperial cities, in favour of the Proteſtants. In the College of the Princes alone, the votes of the Catholics were ſomewhat ſuperior in number to thoſe of the Proteſtants. It was by no means, therefore, an unequitable demand, that, with reſpect to the Germanic Empire in general, one religious party ſhould be conſidered equally as good as the other! This then was at laſt adopted, as one of the firſt principles in the Peace of Oſnabruck, that a perfect and mutual equality ſhould prevail among the States of the different religions; ſo that what was law for one party, ſhould be equally ſo for the other.

Nothing could be more inconſiſtent with this principle, than for one party to endeavour to gain the aſcendancy over the other, merely through a majority of votes, of which the Proteſtants had already on every occaſion complained. To remove theſe grievances, in ſuch caſes where it was poſſible to appoint an equal number of perſons in the name of the Emperor and Empire, it was adopted as a rule, always to appoint an equal number of perſons of both religions, as in the Imperial courts of judicature, aſſembly

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bly of deputations, and commiſſions where ſentences might be awarded in cauſes relating to perſons of different religions. Where the number of votes could not be in a perfect equality, as at a general Diet, where the votes muſt be taken according to the number in which they are found; in that caſe, when the adherents to the different religions differed in opinion, it was agreed that the diſſenſion ſhould not be decided by a majority of votes, but by an amicable compromiſe.

The Catholics had already often declared their opinion, that it was impoſſible to be guided in matters of religion by a majority of votes; neither could the doctrine laid down by the Proteſtants, that in matters of conſcience every one muſt be conſidered individually, and by no means as a member of civil ſociety, and ſubject to a collegiate deciſion, with any reaſon be objected to. The Proteſtants inſiſted, that in this caſe likewiſe, when States were to be conſidered individually, an exception ſhould be expreſsly made of the validity of the majority of votes. Many were of opinion here, that queſtions relating to contribution, when ſeveral votes were inclined to impoſe a tax upon the others againſt their will, ought to be included; but this point, reſpecting contribution, which certainly had its difficulties, was obliged at laſt to be left undetermined, and referred for deciſion to the next Diet. This, however, has never followed yet, and has left therefore no ſmall imperfection in the Germanic conſtitution; as it may always be objected to a tax

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propoſed at the Diet, that it has never been determined yet, whether it can be granted by a majority of votes, or not.

Experience moreover has frequently taught us, that the queſtion, Whether this or the other thing was really a matter of religion or conſcience? has come into debate, and recourſe has been very often had to a majority of votes, even in affairs which were merely ſecular, but had ſome near or diſtant advantage in view, which the Catholics hoped to procure either for themſelves, or others perhaps of the ſame religious perſuaſion. For this reaſon, the firſt propoſal of the Proteſtants, in their complaints made on this ſubject in November 1645, was expreſſed in the following words: "That the majority of votes ſhould "in future be of no validity, not only in caſes of "religion, contribution, and other matters, where "the States were to be conſidered individually *(ut "ſinguli)*; but in each and every reſpect, whatever "it might be, where the Roman Catholics conſti-"tuted one party, and the Proteſtants another." Of the ſeveral objects here mentioned, the ſecond, as I have already obſerved, reſpecting contributions, remained undetermined: the three others were at laſt determined by the Peace in the following words: "In religious affairs, and all other concerns where "the States cannot be conſidered as one body, as "likewiſe when the Catholic and Proteſtant States "ſeparate into two parts, or maintain different "opinions, the diſpute ſhall be determined by

"com-

" compromiſe, without regard to the majority of " votes (*a*)." CHAP. IV.

In the conjunctions WIE AUCH (as likewiſe), there was evidently a tranſition from the two above-mentioned objects to a third object diſtinct from both; which meant, beyond a doubt, that in all caſes, without any limitation, whenever the Catholic and Proteſtant parties maintained a different opinion, neither of them ſhould gain the advantage of the other by a majority of votes. Whether we judge by the occaſion, or the context of this article of the peace, the queſtion was not, as has been variouſly ſuggeſted, " In what caſes, or concerning what objects, the two " religious parties have a right to divide * ?" but " When ſhall the majority of votes loſe its effect?" The anſwer was, " Not only in matters of reli" gion, and other caſes, where each State is to be " conſidered individually; but in all affairs what" ſoever, where the two parties maintain a different " opinion."

Nothing therefore can be ſo far from the meaning of this paſſage, as the confined explanation which ſome are diſpoſed to make, that ſuch a diviſion of the two parties is only admiſſible in matters of religion.

 For

(*a*) LONDORP, *Acta Publ.* Tom. I. p. 138. MEIER, *Acta Pac. Weſtph.* Tom. I. p. 701, 824.

* This, in the Public Law of Germany, is called *Jus eundi in partes*.

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For this very reaſon it was eſtabliſhed as the bulwark of the Proteſtants, that whenever the Catholic States attempted to make uſe of the majority of votes at the Diet for their own advantage, they might have recourſe to this meaſure as a remedy againſt them, without there being any neceſſity for a previous inquiry, whether the ſubject in queſtion was a caſe of religion, or likely to have any influence on religion, either directly or otherwiſe. This was indiſputably the only method which could be adopted for the preſervation of an equality. To accompliſh the principle of a perfect equality of the two religions, and that the rights of one party ſhould be equal to thoſe of the other, in any other manner, would have been an abſolute impoſſibility.

I ſay, equality of the *two* religions. This is the language of the Peace of Weſtphalia, as well as of the ſucceeding fundamental laws of the Empire. Not *three* religions—for if the Calviniſts and Lutherans are both comprehended among the adherents to the Augſburg Confeſſion, the relation between theſe two is quite the reverſe of that between theſe and the Catholics. The points in which the Lutherans and Calviniſts agree, cannot be affirmed of the Catholics and Proteſtants; neither can the rules, *vice verſa*, be adopted by the former, which were made for the latter. Among other things, this is ſufficiently evidenced with reſpect to the definitive year 1624, which was adopted by a particular article of the Peace of Weſtphalia, as a deciſive epoch among the Lutherans and

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Calvinifts in the Palatinate; but otherwife ferves, among the adherents to thefe two religions, for no decifion at all. Thus, I fay, it was not three, but only two religions, which were placed upon an equality with each other; although, under one of thefe, two different divifions are again included, which ftand each of them in a diftinct relation. CHAP. IV.

According to the further articles of the Weftphalian Peace, no other religion befides thofe already mentioned ought to be received or tolerated throughout the Germanic Empire; neither are the adherents to any other religion allowed, from the Empire, the enjoyment of equal civil rights. But this does not mean, that in particular countries or Imperial cities, there fhould be no other religious worfhip allowed, or that perfons of another perfuafion are not to be tolerated. We have fufficient proofs to the contrary of this, in the frequent inftances of the toleration of Jews, who, though they are not entitled to all the rights of citizens, yet may be protected by any State of the Empire, and indulged in the free ufe of their religious worfhip; and the fame may be faid alfo of the Quakers, Menonifts, &c.

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CHAPTER V.

Negociations concerning the political Grievances of the States of the Empire, with respect to their Territorial Rights.

Establishment of territorial supremacy in general, including the right of forming alliances—The possession at the same time secured of the Imperial mortgages—Established state of the Imperial cities, Imperial nobility or knighthood, and Imperial villages.

ONE of the principal political grievances which were inquired into, in the negociations of the peace, related to the sovereignty of the States of the Germanic Empire over their respective territories. Although actual possession, and the custom of several centuries, pleaded in their favour, yet doubts still frequently arose concerning the rights of which every State could claim the exercise, within the limits of his country. It was said, that they had only a right to such regalia, or rights, as they had been particularly invested with; but that these did not comprehend all the rights of sovereignty. Against this, however, the powers of France and Sweden procured an express declaration in the peace, "that all and each individual State of the "Empire should be protected and established in the "free exercise of their territorial power, and the posses-

"sion

" sion of all their rights, and be molested by no one, " let him be who he would, in future." Whatever rights of sovereignty, therefore, are comprehended in the supreme power of a State, such rights are attributed as the territorial power of every State, though they are not totally independent, but acknowledge a subordination to the Emperor and Empire; and that certain prerogatives which belonged to the Emperor, before the establishment of the territorial sovereignty throughout Germany, continued peculiar to him, as his so-denominated RESERVED RIGHTS. These are, principally, the rights of conferring titles of rank, and academical degrees, and certain other prerogatives, such as granting a right to establish tolls, and mints, with which it is at least requisite to be invested by the Emperor. All other rights, however late in their origin, are now included of themselves in the right of territorial sovereignty.

It was expressly declared in the Peace, that each individual State should be perpetually at liberty to form alliances for their preservation and security among themselves, as well as with foreign powers, provided such alliances were not against the Emperor and Empire, nor repugnant to the public peace, or the duty which each of them owes to the Emperor and Empire. By this it was determined, that every State can form any sort of league, not only as the ally of another power, but as the belligerent party. Of course, therefore, they have the power of making war, and concluding peace. The public peace, and the relation in

in which all the Imperial States ſtand, as members of the ſame Empire, in mutual connexion with each other, lay them however under this natural reſtriction, that one State cannot invade another. (But what if two foreign powers are at war, and one of theſe is allied with one State of the Empire, and the other power with another? which may really be, and actually was the caſe in the northern war which afterwards broke out, when the Electorate of Saxony was allied with Denmark, and Brunſwick-Zelle with Sweden; and the Saxons, as auxiliaries in the Daniſh ſervice, broke in upon the country of Zelle.)

Among the prerogatives, and even lands, in the poſſeſſion of the States, there were many which had been formerly mortgaged to them by ſome of the Emperors. Such Imperial mortgages, it is true, had been generally renewed by one Emperor after the other; and even ſince the time of Charles V. a promiſe was contained in the election capitulation, to confirm the mortgages to the different States, and protect them in the poſſeſſion of them. But notwithſtanding this, according to the nature of mortgages, there always remained a poſſibility of their being redeemed, which Ferdinand II. had already attempted with the Imperial cities of Lindau and Weiſſenburg, in the Nordgau. The apprehenſions ariſing from this circumſtance were removed by a declaration, that although mortgages among the States themſelves ſhould be conſidered as redeemable, the Imperial ones ſhould remain in the hands of their poſſeſ-

possessors (*a*). To this article many of the Imperial cities are indebted for the preservation of their rights of provostship *, which had been formerly mortgaged to them by the Emperors, and by the redemption of which most of the Imperial cities would have had the Emperor for their real territorial Lord. CHAP. V.

The Imperial cities in general were fully confirmed in the possession of their customary regalia, and entire sovereignty, and jurisdiction, both within their walls, and in the territories under their dominion. The free Imperial Nobility, or Knights of the Empire, were confirmed likewise in their immediacy, as established by custom; and with respect to their religion, were allowed the same indulgences as those granted to the States. Even certain immediate parishes were included in the Peace, which are still distinguished by the name of Imperial villages.

(*a*) In the last capitulation of 1742, Art. x. § 4. it is still more decisively expressed, "to protect the States in the Imperial "mortgages in their possession, without redeeming or reclaiming "them, and leave them in that state till further agreement."

* Reichsvogteyliche Rechte. The word Vogt is supposed to have been corrupted in the middle ages from the Latin *advocatus*. The business of this officer is that of a bailiff or provost, to administer justice in the respective districts.

CHAPTER

CHAPTER VI.

Negociations concerning the Prerogatives of the Diet, and the Constitution of the Imperial Chamber.

Propofal of both Crowns refpecting the neceffity of requiring the confent of the Diet, and freedom of votes of the States in important concerns of the Empire—The Emperor's endeavours to prevent this, fruitlefs—Decifive vote of the Imperial cities, with RE and CORRELATION between the three Colleges of the States, without a majority of votes being of any avail—Equality of religion eftablifhed among the affeffors of the Imperial Chamber, and the fucceeding prefentations, with refervation of the liberty of certain particular States in the Catholic Circles—Office of Prefident of the Chamber—Equality of religion among the officers of Chancery.

THE obftacles to be removed refpecting the part claimed by the Imperial States in the government of the whole Empire, were not a few. The Imperial Court was difpofed to confider it as a matter entirely dependent on the Emperor's pleafure, whether he found it neceffary to hold a Diet or not, and in what cafes he ftood in need of the opinion or refolution * of the States, and when he might reject it? They feemed inclined to attribute a confined fenfe to the term,

* GUTACHTEN is the opinion of the States, fomewhat in the form of a bill of our Englifh Parliament before it receives the King's affent.

term, "REICHSGUTACHTEN" (opinion of the Empire); as if it was to be confidered only as good counfel, which refted folely on the pleafure of the Emperor whether he would follow it or not, without his being neceffarily bound to act with the confent of the Empire. Againft this, however, both Crowns immediately infifted, "that the States fhould enjoy a freedom "of voting in all deliberations on the affairs of the "Empire, particularly when the queftion was either "to make or explain laws, make war, impofe taxes, "make regulations refpecting the recruiting or quar-"tering of troops, erect new fortifications in the ter-"ritories of the States, or garrifon fuch as exifted "before, conclude peace, enter into alliances, or "other bufinefs of a fimilar nature; that in future "none of thefe things, nor any thing of the fame "kind, fhould be done or permitted without the "Diet having firft given its confent, and all the "States allowed the freedom of voting."

The Imperial ambaffadors propofed, that one more claufe fhould be added, "that all this fhould be "underftood, with the refervation of thofe rights "which belonged to the Emperor alone, or jointly to "him and the Electoral College, and in general ac-"cording to ancient cuftom." This, however, was in vain; for when the ambaffadors of the two powers took occafion from this circumftance to propofe, that the Imperial Court fhould deliver in a lift of fuch *refervata*, as they were called, the Emperor's minifter fcrupled to do it. It is probable, that difputes would have

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have arisen respecting the number of rights, whether they were comprehended in the *reservata* or not; and then at last perhaps the Emperor's power would have been expressly limited to certain rights there mentioned. Thus, this article was at last inserted in both the treaties of peace, as proposed by the two Crowns. Since that period, doubts have been liable to arise concerning what was included in the expressions, "affairs "of the Empire—other business of a similar nature— "or any thing of the same kind;" or how far the Emperor's reserved rights, on the other hand, legally extended over certain objects. For instance, If the supreme judicial power is a reserved right of the Emperor, whether, and how far, he may act for himself at a visitation of the Imperial Chamber, and dispense with this or the other regulation?

The only question which was the subject of debate concerning the internal constitution of the Diet was, whether the Imperial cities should have a decisive vote in the general Diets, and in all particular assemblies of the States, as well as the States themselves. Ever since deputies were sent from the Imperial cities to the Diets, they had been allowed only a deliberative, and not a decisive vote; a *votum consultativum*, not *decisivum*. Even in the reign of Charles V, the Imperial cities complained of this against the other States. The Peace now declared in their favour, that they should always be included under the denomination of States of the Empire; and

that

that their votes, and thoſe of the other States, ſhould be of equal value. CHAP. VI.

Every thing elſe was left as it was eſtabliſhed by cuſtom. It had long been uſual for the Electoral College to hold their deliberations apart from the College of Princes; and afterwards theſe two, which, with reſpect to the Imperial cities, were called the Superior Colleges, agreed by RE and CORRELATION* on a joint reſolution, before the cities were invited, as the third College of the States, to join in a common reſolution of all the three Colleges, and form an opinion of the Empire.

If the three Colleges are not united, the queſtion before them generally drops: a majority of votes among them is of no validity. The two ſuperior Colleges themſelves have declared, that they did not require this to the prejudice of the cities; much leſs is it allowed for them, in a difference of opinion between the two ſuperior Colleges, to give the caſting vote. The deciſive vote granted by the Peace of Weſtphalia to the Imperial cities, cannot therefore be taken in this ſenſe. The queſtion there, was not concerning a majority of votes among the three Colleges, but of the right of the States to vote in general, which was granted to the Imperial cities, in the ſame manner as to other States, oppoſed to the

* When the two Colleges are deliberating upon any particular ſubject, the reſult of the deliberations of each is communicated to the other by means of the *Directorium*, till they are united in the ſame opinion, which is termed RE and CORRELATION.

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mere deliberative vote which had been before attributed to them (*a*). The effect of this is of the greateſt importance, which is evidenced in the Aſſembly of Deputations, where a few Electors, Princes, Prelates, Counts, and Cities, deliberate together in the name of all the States; in which caſe the vote of each of the Imperial cities individually is exactly of the ſame validity as that of an Elector or a Prince, or of a whole College of Imperial Counts or Prelates.

It was ordained, that in the Imperial Chamber, in cauſes in which Catholic and Proteſtant States were concerned with each other, or even in cauſes where the parties were of the ſame, and a third perſon intervened of a contrary religion, there ſhould be a perfect equality of religion obſerved in the appointment of the members of the Court. It had for this reaſon been previouſly agreed upon, that the whole Chamber ſhould be compoſed of an equal number of perſons of both religions; a circumſtance perfectly conſiſtent with the principle, that in this reſpect in the Empire in general there was a mutual equality. But when it was judged expedient to appoint fifty Aſſeſſors, that they might be divided into a greater number of Senates, and that all the cauſes which were brought before the court, which were very numerous, might be decided with greater certainty, the Proteſtant States were not allowed twenty-five preſentations, as they ought to have been, in conformity to the principle of a perfect equality, but only twenty-four. The Catholic States likewiſe

(*a*) PÜTTER's Contributions to the Knowledge of the Public Law, and Law of Princes in Germany, Vol. I. p. 77, 88.

likewiſe were properly to have had only twenty-four presſentations; but the two which were wanting in the number fifty, and which were both Catholic, were left to be preſented by the Emperor. The Chamber, therefore, did not procure any religious equality, for twenty-ſix of the Aſſeſſors were Catholics, and only twenty-four could be Proteſtants.

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With regard to the Proteſtant preſentations, it was inſerted in the Peace, that the Proteſtant Electors of the Palatinate, Saxony, and Brandenburg, ſhould have the right of preſenting two; each of the two Circles of Upper and Lower Saxony, which were reckoned purely Proteſtant, four; and that they ſhould alternately preſent a fifth; the Proteſtant States in the mixed Circles of Franconia, Swabia, the Upper Rhine and Weſtphalia, for each of them, two; and for the four Circles together, alternately another; that they ſhould preſent in all, therefore, four and twenty Proteſtant Aſſeſſors. The diviſion of the preſentations of the Catholic States was referred to the next Diet. The four Catholic Electors of Mentz, Treves, Cologne, and Bavaria, were each of them allowed the right of preſenting two; the Circle of Bavaria, four; and the Catholic States of the mixed Circles of Franconia, Swabia, the Upper Rhine, and Weſtphalia, for each of the Circles two; in all, therefore, the ſame number, four and twenty Catholic Aſſeſſors.

There happened to be two or three Proteſtant States in the Circle of Bavaria, as the Counts of Wolfſtein

BOOK VII. and Ortenburg, and the Imperial city of Ratiſbon; but as by far the greater part of the members of the Circle were of the other religion, it was reckoned purely Catholic. A particular proviſion, however, was made in the Peace, that the circumſtance of the Proteſtant States having no part in the preſentation of the Circle, ſhould not tend to their prejudice. It was the ſame caſe in the Circle of Lower Saxony, which paſſed for a purely Proteſtant Circle, although the Biſhop of Hildeſheim was a member of it.

At the firſt inſtitution of the Imperial Chamber, there was no idea of any other office than that of the Chamber Judge, and the Aſſeſſors: the latter, viz. the Aſſeſſors of the Imperial Chamber, as they are now called, were to be at leaſt half of them noble. There were hopes, that perſons even of high nobility would offer themſelves; and at firſt, indeed, there was a Count of Eberſtein, whom they honoured, as an Aſſeſſor of rank (*Aſſeſſor generoſus*), with a ſeat immediately next to the Judge before all the others. As a court, according to the ideas which then prevailed, could not be held, unleſs a Judge preſided, it was a great advantage for an Aſſeſſor of rank to be preſent, that, in caſe of the abſence or ſickneſs of the Judge, he might ſupply his place. This advantage was conſiderably increaſed, when the Aſſeſſors were afterwards divided into different Senates, and as each of theſe ought by right to have a Preſident of high nobility. Thus it was eſtabliſhed as a law, that the

the Imperial Chamber should always have two Counts, or Barons, to preside in those Senates where the Judge himself could not be present, and who, in cases of necessity, should supply the Judge's place in general. These were afterwards denominated Presiding Assessors; and at last, PRESIDENTS OF THE IMPERIAL CHAMBER. Their presentation, however, was left to the Emperor; and in this manner they were mentioned in the Peace of Westphalia, that, according to the proportion of fifty Assessors, the Emperor should appoint four Presidents, and that two of them should be Catholics, and two Protestants (*a*). CHAP. VI.

The office of the Judge of the Imperial Chamber could not be divided, and remained therefore very justly to be nominated to by the Emperor alone. A proposal however was made, that it should alternately be held by a Catholic and Protestant(*b*), by which the Chamber,

(*a*) If the Emperor could be obliged to nominate two Protestant Presidents, the two Assessors presented by him could just as well be of both religions, in order to make the whole number of the fifty Assessors, of both religions, equal: but instead of that, the unequal number of twenty-six Catholic Assessors, and twenty-four Protestant ones, still remained, and has never since been altered.

(*b*) According to the proceedings at the negociation of the Peace of Prague, 1635, § 26. the Elector of Saxony proposed, that after the decease of the Catholic Judge of the Chamber, then in office, there should be one nominated of the Confession of Augsburg, and after him again a Catholic; and so a Judge of each religion appointed alternately. This was then referred to another meeting, and was to have been taken into immediate consideration.—Collection of Recesses of the Empire, Part III. p. 538.

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Chamber, upon the whole, would not have been a disadvantageous circumstance; but in the treaty of Westphalia, the appointment of the Judge was absolutely left to the Emperor, without restriction to any particular religion.

The nomination of the officers of Chancery who were employed in the writings and archives of the Chamber, is vested in the Elector of Mentz, as Arch-Chancellor of the Empire. As these persons might have some influence at least in the expediting or delaying of particular causes, it was by no means unjust that here, likewise, there should be an equality observed in religion. Even in the Religious Peace of 1555, it was for this reason ordained, "that the "Judge and Assessors, as well as all other persons "belonging to the Imperial Chamber, should be appointed from the old religion, and from the Con-"fession of Augsburg." The Westphalian Peace, likewise, expressed this idea evidently enough, when it mentioned the religious equality to be observed in the appointment of the Judge, Presidents, Assessors, and all others employed in the administration of justice (*quoscunque justitiæ ministros*) in the Imperial Chamber. The exact determination of this, however, was referred to the succeeding Diet, and has never taken place from that day to this. The Elector of Mentz appeals to his right of disposing of these offices, without any restriction, as established by ancient usage; but a law of the Empire might certainly prescribe the personal qualifications of the officers

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officers of Chancery, without any infringement of this right whatever; and the Emperor himſelf might as well complain of an infringement of his right of appointing the Preſidents of the Imperial Chamber, becauſe they muſt be of both religions, as the Elector of Mentz appeal to ancient uſage, againſt a ſimilar reſtriction. This circumſtance would certainly have been attended with this advantage, that a degree of emulation would have ariſen in the Chamber among the adherents to the different religions, which might perhaps have extended itſelf even to an improvement in their hand-writing. But whenever this ſtring, ſince that period, has been touched, even in the ſlighteſt manner, it is almoſt incredible how much the whole party of the Catholics have been alarmed, and endeavoured by every poſſible exertion to prevent the innovation.

CHAPTER VII.

Negociations of the Peace, relative to the Aulic Council.

Concurring juriſdiction of the Aulic Council with that of the Imperial Chamber acknowledged, and attempts made to remove the objections—Statutes of the Chamber were to ſerve for the proceedings of the other court—and particular ſtatutes were to be made for the Aulic Council, which was done afterwards by Ferdinand III.—A religious equality eſtabliſhed—Viſitation to be ſettled at ſome future period—A reviſion to be allowed as a legal reſort, in the ſame manner as at the Imperial Chamber.

A THING which yet remained to be inquired into, in the negociations, was the important article of the Aulic Council. This point was ſo zealouſly agitated by the Emperor's miniſters, that they ſeveral times declared, that an attempt to lay any reſtriction upon the Aulic Council, was an attack upon the crown and ſceptre of the Emperor. Notwithſtanding this, the grand queſtion which had been ſo long debated, "Whether the Emperor, or rather the Aulic "Council, might claim a concurring juriſdiction with "the Imperial Chamber?" was not expreſsly decided. The Emperor's party contrived to manage matters ſo well, that only a few objections made againſt the Aulic Council were removed by particular ordinances. The affair itſelf ſeemed by this to be conſidered as ſettled.

Thus,

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Thus, it had been alledged againſt the Aulic Council, that it had no judiciary laws, or order of proceſs, without which there could not well be a regular adminiſtration of juſtice, as it would otherwiſe be merely arbitrary. In the reigns of Ferdinand I, Rudolphus II, and Mathias, it is true, there were certain rules drawn up for the Aulic Council (*a*); but theſe were not ſo much rules for proceeding in the court, as inſtructions, ſuch as every collegiate council, which is deſigned for the tranſaction of other buſineſs, as well as affairs of juſtice, may receive from a Sovereign, to direct them how buſineſs, of whatever kind it may be, is to be brought forward and examined. The rules of the Imperial Chamber need only to be compared with thoſe of the Aulic Council, to prove how very far the latter were from affording any certain regulations, which a court of judicature could adopt, to determine its legal proceedings. This objection was anſwered by the Count of Trautmannſdorf, with the ſhort declaration, that the Emperor would be pleaſed to adopt the rules of the Imperial Chamber as rules for the Aulic Council. It was eſtabliſhed, therefore, in the Peace, that the Aulic Council, or as it was here expreſſed, the Emperor's Court of Judicature, ſhould be guided, as far as related to its judiciary proceedings,

(*a*) The ſtatutes for the Aulic Council of Ferdinand I. were made April 3, 1559; thoſe of Rudolphus II. were entitled "Inſtructions for the Aulic Council;" thoſe of Mathias were of July 3, 1617. They may be met with altogether in the Appendix to Uffenbach *de Conſil, Imp. Aul.*—Mantiſſ. p. 5—40.

BOOK VII. proceedings, by the rules of the Imperial Chamber, in every respect whatever.

Against this indeed it might be urged, that the rules of the Imperial Chamber, which in many respects were adapted to the particular constitution of that court, such as its division into senates, &c. could not be applicable throughout to the Aulic Council, which was quite a different institution. This objection was removed by the expectation, that entire new rules would be drawn up for the Aulic Council, in which every thing necessary might be inserted suitably to its own particular constitution. The States were in hopes that these new regulations, by virtue of the legislative power which the Peace had already made subject to the deliberations of the Diet, would be proposed at the next meeting, to be drawn up and promulgated; but Ferdinand III. took the whole upon himself, in the same manner as the former Emperors had made the rules for the Aulic Council, which had been hitherto in use, as private instructions for their counsellors. Before the next Diet was convened, he had a new set of rules drawn up and printed at Vienna, and promulgated them without the consent of the Empire. In these, several articles of the Westphalian Peace were literally translated; and when the States scrupled to admit of such a legislation, he declared, that he was by no means disinclined to hear their remonstrances against it.

Another objection made to the Aulic Council was, that it was entirely composed of Catholic members. The

The Count of Trautmannſdorf removed this, by conſenting that the article in the Peace of Oſnabruck, reſpecting the equality of religion to be obſerved in the Imperial Chamber, ſhould extend likewiſe to the Aulic Council; and it was further added, "that the "Emperor ſhould for this end nominate to the Aulic "Council a certain number of learned men, and "men verſed in the affairs of the Empire, who were "of the Augſburg Confeſſion, from the Proteſtant "or mixed Circles; and there ſhould be an adequate "number for an equality of Aſſeſſors of both reli-"gions to be obſerved, in caſes where it was requiſite." In the rules for the Council, which were afterwards made, Ferdinand more deciſively declared, "that the "Aulic Council ſhould not exceed eighteen in num-"ber, including the Preſident; and that, among thoſe "eighteen, there ſhould be ſix of the Augſburg Con-"feſſion taken from the Circles." This number of eighteen has been ſeveral times exceeded: in the reign of Leopold, it amounted to thirty-nine; and ſtill there were but ſix among the Council who were Proteſtants, and one or two of theſe frequently abſent for a conſiderable length of time.

As for a viſitation, ſuch as was uſual with the Imperial Chamber, this could not well be expected at the Aulic Council. On account of the connexion in which that Court ſtood, according to its original eſtabliſhment with the Imperial Court of Chancery, it was formerly allowed for the Elector of Mentz, as indeed the rules for the Council granted by the

Emperor

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Emperor Mathias in the year 1617 ſtill expreſſed it, "to viſit and preſide over it, and continue ſuch viſits, "with the Emperor's cognizance, as often as neceſſity "required." But this viſitation of the Elector of Mentz could not be put in compariſon with that which was cuſtomary at the Imperial Chamber. This, therefore, occaſioned freſh matter for objection, that the States could not place that confidence in the Aulic Council which they could in the Chamber. On this point, it was only inſerted in the Peace of Oſnabruck, "that the Elector of Mentz ſhould viſit "the Aulic Council as often as was neceſſary, with "obſervation of what the Empire in general, aſſem-"bled at the Diet, thought fitting to be done." "In the rules of the Aulic Council," ſays Ferdinand III, "as far as reſpects the viſitation of our "Aulic Council, we leave it as ordained by the arti-"cles of the Treaties of Munſter and Oſnabruck." In the late capitulation of 1742, the following paſſage occurs: "We ſhall and will take the opinion "of the Empire concerning thoſe articles which were "left by the Peace of Weſtphalia for deliberation at "the ſucceeding Diet, reſpecting the *modum viſitandi*, "or the kind and mode of viſitation, and give the "reſolution thence ariſing its due force and efficacy. "In the mean time, however, we permit the viſita-"tion from the Elector of Mentz, as Arch-Chancellor "of the Holy Roman Empire, to be continued every "three years, till another is fixed upon at the Diet, "which ſhall lay the acts of the viſitation, before the "States of the Empire; and that, wherever a defi-

"ciency

" ciency appears, the Diet ſhall make ſuitable pro- " viſion for its remedy." But the effect of this is ſtill to be expected.

Beſides the complaint made of the want of a viſitation, and laws for regular proceedings in the court, another objection was made, that there was no legal reſort by which parties who thought themſelves aggrieved might hope for redreſs, as in the Imperial Chamber, where every aggrieved party was at liberty to apply for reviſion. To remove this objection, it was inſerted in the Peace of Oſnabruck, " In order that perſons having cauſes depending be- " fore the Aulic Council ſhould not be wholly de- " prived of all legal reſort, ſuch as think them- " ſelves aggrieved by the ſentence of that court, in- " ſtead of the reviſion in uſe in the Imperial Cham- " ber, ſhall be at liberty to ſupplicate his Imperial " Majeſty, that the judiciary writings may be again " reviſed, with the concurrence of an equal number " of other impartial counſellors of both religions, " who are able to judge of the cauſe, and were not " preſent when the ſentence was firſt paſſed, or at " leaſt did not occupy the place of RE or CORREFE- " RENDARY." This article was afterwards repeated in the rules for the Aulic Council of Ferdinand III, without any addition. The queſtion however ſtill remained, How this could be accompliſhed, as all tranſactions of the Aulic Council were done in full council, and it was impracticable therefore to chooſe other members of the Council for the reviſion of a

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cause, who were not present when judgment was given on the first trial? The actual practice at present, when a party has recourse to a revision, is to appoint a new RE and CORREFERENDARY *; a circumstance which is certainly of the more importance, as in general a great deal depends upon those officers.

This is certainly attended with one advantage, in comparison with the revision of the Imperial Chamber, that the visitation of the Aulic Council does not remain in suspense, as that of the Chamber has done for two hundred years, but may be accomplished with very little loss of time. But this is again by no means such a thorough revision as that of the Chamber: there the cause comes into quite different hands, whilst here the decision of the question, Whether the former sentence was right or wrong? depends upon those very suffrages which contributed to its being pronounced at first. In other respects, the rules prescribed by the laws of the Empire for the Imperial Chamber, concerning law-terms, forms, and what was otherwise requisite for a revision, were applied, where it was at all practicable, to the Aulic Council. Among other things, parties engaged in law-suits must deposit SUCCUMBENSGELD, as it is called, that is, a certain sum, which the Aulic Council fix, according to the state of the case, at several hundred or thousand dollars, to be previously deposited,

* These are the officers appointed to make extracts from the papers relating to the causes taken cognizance of by this tribunal; from which extracts the Court forms its judgement.

deposited, within a certain time, by the party demanding a revision; but upon condition of its being returned, in case their complaints should be found to be well grounded, and the former sentence revoked. If, on the contrary, notwithstanding the revision, the former sentence is confirmed, this money is forfeited. In the Imperial Chamber, this money is disposed of at the visitation; but neither the visitors nor the assessors of the court derive any advantage from it whatever. But in the Aulic Council, cases frequently occur, where certain perquisites, such as LAUDEMIALGELD, or fees paid at the investiture of a fief, conferred upon collateral relations, or a new grant from the Emperor, have been divided among all the members of the Aulic Council, and constitute a part of their salaries. In the same manner the Aulic Council divide among themselves all the dues for revision, as soon as the cause is rejected, and the former sentence confirmed.

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CHAPTER VIII.

Negociations on some particular points respecting the two Supreme Tribunals in general.

Preservation of the resort to a Court of Austregues, and other prerogatives respecting the administration of justice—Certain cases referred to the Diet—Dispute occasioned afterwards by the article, whether the Judge of the Chamber, in case of an equality, was allowed a casting vote—Invalidity of a majority of votes, when the other party of religion unanimously oppose it—The ancient custom of holding a Court of the Princes, lost by the Peace of Westphalia, leaving it to the option of the Emperor to take the opinion of certain States, in matters of importance—Influence of this ordinance, on the interpretation of another passage of the Chamber statutes, by virtue of which the Emperor was allowed to take cognizance of such causes which concerned whole Principalities—The question how the ban was to be enforced against the States of the Empire connected with this, which was first decided in 1711—Of the opinions of the Aulic Council.

DIRECTIONS were given, in the Treaty of Westphalia, to both the Imperial Courts of Judicature, the Aulic Council, as well as the Imperial Chamber, that they should not neglect either the legal resort to the Austregues, the first resort of the territorial Courts of Judicature, or the exemption from appeal, which had been granted to some States by particular privilege; and that no infringement should be made on these rights, either by mandate, commission, citation, or in any other manner.

In

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In ſome caſes, the Imperial Tribunals were directed to refer the parties to the Diet. Theſe caſes were, firſt, if any doubt ſhould ariſe concerning the meaning of a law, which required an authentic explanation; and ſecondly, if a difference of opinion aroſe in a cauſe where an equality was to be obſerved in point of religion, and where, in an equal number of both religions, all the Catholics maintained one opinion, and all the Proteſtants another: but the other cauſes, where the voices were equal in number, but mixed in point of religion, were to be decided according to the ſtatutes of the Chamber.

This article of the Peace of Weſtphalia has, ſince that period, occaſioned various diſſenſions. It is certain that, whenever the ſtatutes of the Imperial Chamber have been mentioned in any new laws, no others were meant than thoſe of 1555: all former ones are by theſe aboliſhed, where the contents are not repeated. If any of the ancient ſtatutes of the Chamber were to be again reſtored by a new Imperial law, it would infallibly have been determined which were meant, whether thoſe of the year 1495, or thoſe of 1500, 1521, &c. It is impoſſible to ſuppoſe, therefore, that in this article of the Weſtphalian Peace, where the ſtatutes or rules of the Chamber are mentioned in general, without reference to any particular year, or any other diſtinction, exactly thoſe ſhould be meant of 1495, or indeed any other than thoſe of 1555.

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Notwithstanding this, many have maintained that the intention here, was to revive a passage from the first statutes of 1495, which, in cases where the votes of the assessors were equally divided, gave the Judge of the Chamber a casting vote. At the first institution of the Imperial Chamber, which happened in the eve of the middle ages, this may be supposed to have been practicable; for in those times there occurred but few cases of law, which were too subtle for a person of rank and experience to decide, provided he had only a small share of judgement and reflection; and as for a knowledge of the Roman and canon laws, but little of this was necessary. When the proceedings began afterwards to be conducted at the Imperial Chamber in writing, and the advocates met their antagonists with arguments collected from the Latin law-books, such a skilfulness and experience in relating and examining such causes soon became necessary for the proper decision of them, which a Prince or a Count, who might otherwise make a very good judge, and preserve order by his authority, and the integrity of his conduct, among the members of the Court, could not be expected to possess. That this passage, therefore, of the first statutes of 1495, was not repeated in the succeeding ones, and particularly omitted in those of 1548 and 1555, was certainly not merely accidental, but designed; and if it had been the intention of the Treaty of Westphalia to have introduced again the casting vote of the Judge of the Chamber, it would have been declared in a very different manner.

One

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One difficulty remains, indeed, that the ſtatutes of the Imperial Chamber of the year 1555, is an extenſive work, conſiſting of three volumes; the firſt of which has eighty-ſix, the ſecond thirty-ſix, and the third fifty-five, ſections, and each ſection contains ſeveral paragraphs. The particular book, ſection, and paragraph, ought properly to have been pointed out. It is probable that the perſon who was employed in drawing up this part of the Peace, had ſome confuſed idea of having once read ſomewhat about this in the ſtatutes of the Chamber, but did not give himſelf the trouble to ſearch for it.—If he had done this, the affair perhaps would have been more explicitly expreſſed, as nothing further is ſaid in the ſtatutes of the Chamber, than that the Court ſhould come to a deciſion in full council. Happy would it be, if this was the only inſtance where the laws of the Empire are expreſſed in too general terms, or that this example might ſerve for a warning in all ſimilar caſes!

It is true, that in the ſtatutes for the Aulic Council, the Preſident is allowed a deciſive vote; but the Preſidents of that Court have generally been counſellors themſelves for ſeveral years; of courſe, therefore, experienced in the practice of relating cauſes, and delivering their votes: and though the ſtatutes of the Imperial Chamber may be always applied to the Aulic Council, yet the ſtatutes of that tribunal cannot be applied to the Imperial Chamber.

 If,

If, likewife, without any regard to religion, for inftance, two Catholic Electors fhould have a caufe depending at the Imperial Chamber, and there fhould be an equal number of votes, as was almoft the cafe a few years fince with the Elector of Cologne and the Elector Palatine, concerning fome particular impofts at Raiferfwerth; it is a very dubious point, whether it would be advifable to leave the decifion merely to the perfon of the Judge. It would of courfe be of ftill greater importance between the parties of different religions; and even fuppofing that a Judge poffeffed all the neceffary knowledge, and was otherwife fufficiently qualified for his office, ftill this would be no fecurity for futurity, becaufe the queftion concerns the office of a Judge of the Imperial Chamber in general, and the qualities which may legally be expected to be effential to it.

This article of the Peace of Weftphalia contained another ordinance, enacting, that when the members of the Imperial Tribunals, and of the different religions, maintain an oppofite opinion, the caufe fhall not be decided by a majority of votes, but be referred to the Diet: here, however, it was exprefsly added, that if only one or two members of one religion acceded to the opinion of the other party, this ordinance fhould lofe its force. In this cafe, therefore, a perfect unanimity was requifite to prevent the efficacy of a majority of votes, which was the very reverfe of the cafe mentioned above, of a religious

religious separation at the Diet, where the restriction that the religious party which separated from the other, must be entirely unanimous, was not added. Hence we may conclude, that such a unanimity is only requisite in the former case, and not in the latter, for else the same restriction would have been made; especially as in the Senates of the Imperial Chamber, there is both a smaller number of persons, and these equal in point of religion; and it would be very strange if, in a Senate consisting of four Catholic and the same number of Protestant assessors, three should prevent the efficacy of a majority of the five remaining votes. On the other hand, at the general Diet, or even in the College of Princes, where there is so great a number of votes of one religion, the majority would always prevail, if only the unanimity of one party of religion was able to prevent it. Hence we may perceive the reason which occasioned the distinction to be made of a restriction only in one case, which has, on that account, no weight in the other.

Since that time, there has been no want of instances of causes of this nature being referred to the Diet. This has never been the case, to the best of my knowledge, with the Aulic Council; and yet one would think that the six Protestant counsellors would frequently have had reason to oppose the majority of the other votes; but perhaps an instance has seldom occurred there, where one or two of the Protestant

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counſellors have not acceded to the opinion of the other party, or elſe endeavoured to unite in their opinion, for otherwiſe the cauſe drops, and never comes to an iſſue.

At laſt, during the agitation of the affair of the Aulic Council, it was mentioned that formerly, when any cauſe of importance was brought before the Emperor, out of the Imperial Chamber, it was tried with the concurrence of a certain number of Princes, that Maximilian I. had held ſuch a Court of the Princes in the affair of the Bavarian Landſhut ſucceſſion; and that even Ruldolphus II, in 1580, had taken the opinion of the Electors, in deciding the diſpute between the Elector and the city of Treves (*a*). There was nothing to be ſaid againſt this ancient cuſtom; the Emperor's Miniſters, therefore, made no attempt either to ſet aſide, or debilitate its force; they appeared, on the contrary, perfectly willing to give their conſent to it, by declaring that the Emperor would not be averſe, "in affairs of importance, and "ſuch as might concern the peace of the Empire, to "take the opinion of the Electors, and Princes of "both religions:" but when it was propoſed to eſtabliſh it as the duty of the Emperor to call for ſuch opinion, and that he ſhould be under an obligation to comply with it, it was only inſerted in the Peace itſelf, that it ſhould be left to the Emperor's option. This ſingle expreſſion proved the grave of the

(*a*) HONTHEIM, *Hiſt. Trevir. Diplom.* Tom. III. p. 132.

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the very ancient custom of holding a Court of the Princes:—for every thing which was formerly done with their concurrence, was done now with the sole concurrence of the Aulic Council.

This had a very remarkable influence upon one of the most important articles in the statutes of the Aulic Council. In the year 1521, during the reign of Charles V, when a Council of Regency was established, to take the care of the government, in the Emperor's absence, and act in his name, the Emperor made this reservation,—that when cases occurred which concerned whole principalities, they should not be decided by the Council of Regency, but by himself in person. Thus an article was inserted in the ordinances for the Regency of the year 1521, in the following words: "In cases which relate to principalities, dutchies, counties, &c. where judgement is "to be finally pronounced on any part of the Empire, held as an immediate fief, we reserve such "sentence to ourselves, as Roman Emperor, but "without any infringement, in other cases, on our "Council of Regency, or statutes of the Imperial "Chamber (*a*)." When the Council of Regency was afterwards abolished, Charles V, in the year 1648, ordered this passage, except the last clause, to be inserted in the statutes of the Chamber, where

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(*a*) Collection of the Recesses of the Empire, Part II. p. 173, § 7.—Harprecht, Public Records of the Imperial Chamber, Vol. IV. p. 24.—Pütter's *Opuscula*, p. 357.

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it was retained likewiſe in 1555, and has ſtill therefore its legal force.

So long as an idea could poſſibly be entertained of a Court of the Princes, this paſſage might well be ſuppoſed to imply that law-ſuits which concerned ſuch important objects, ſhould not be left to the Imperial Chamber, but be tried by the Emperor himſelf, with the concurrence of ſeveral Princes. But now aroſe the precedency, which the Aulic Council claimed to itſelf, by aſſerting an excluſive juriſdiction in the cauſes of this nature: and ſince that, diſputes have conſtantly ariſen concerning the meaning of the words; for it may eaſily be ſuppoſed that the Chamber, countenanced by the States, endeavours to attribute as confined a ſenſe to them as poſſible; and the Emperor, on the contrary, inſiſts upon the words being taken rather in an extenſive ſenſe, than a limited one, in favour of the Aulic Council. The Chamber, for inſtance, maintains, that the paſſage extends no further than counties, and not to Imperial ſeigniories, or dynaſties; and that only ſuch counties and principalities are meant, which are immediate fiefs of the Empire, and not any lands that are allodial: that the queſtion here, is only concerning judgment in a trial of title, and not of poſſeſſion*, and concerning entire countries; not where the ſuit concerns a third of a country, or any other part. The Aulic Council, on the contrary, maintains the very reverſe of this, and is ſupported by the Emperor. The matter was to have been referred

* *Petitorium judicium, non poſſeſſorium.*

referred to the Diet in 1742, for an authentic explanation; but this has never yet been done. CHAP. VIII.

A ſimilar object was brought forward in the negociations of the Peace of Weſtphalia, but did not come to any deciſion. If ever a caſe formerly came under the cognizance of a Court of the Princes, it was certainly when a State of the Empire was put to the ban. But when the city of Donawerth, the Elector Palatine, the Duke of Mecklenburg, and ſeveral others were put to the ban, the ſentence was paſſed only by the Aulic Council, or, indeed, only in the Emperor's Cabinet; and who knows with whoſe advice, or by what influence? On this ſubject, therefore, it appeared well worth while, at leaſt to make a particular law; but, in the Peace itſelf, nothing further was ſaid, than that the mode of paſſing the ſentence of the ban of the Empire, ſhould be the ſubject of deliberation at the enſuing Diet.

A decree of the Empire was firſt paſſed, upon this ſubject, in the year 1711, which, though it entitles the Imperial Courts of Judicature to commence a proceſs, in order to get the ſentence of the ban pronounced, and allows the fiſcal, or injured party, and plaintiff, to proceed with the defendant regularly through the legal forms of the Court, yet, as ſoon as the writings are cloſed, and wait only for judgment, they are to be ſent to the Diet, and there ſubmitted to the examination of a deputation of an equal number of States, from the three Imperial Colleges, of both religions.

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religions. This opinion ſhall be again ſubmitted to the general Diet; and the ſentence there agreed upon, ſhall be finally pronounced in the name of the Emperor; but the execution of the ſentence ſhall only be enforced according to the conſtitution of the Circles. In any other way, the whole proceeding ſhall be null and void. (In the year 1758, however, an attempt was made at Vienna, to put the King of Pruſſia to the ban of the Empire, as Elector of Brandenburg, without proceeding in the eſtabliſhed way, of ſubmitting the caſe to the Imperial deputations. The Proteſtant part of the Empire inſiſted upon it, that no one could be put to the ban, without firſt proceeding in the legal manner which had been once agreed upon: upon which, the buſineſs, for that time, dropped.)

Inſtead of holding a Court of the Princes, or taking the opinion of the States, in caſes of importance, the Aulic Council have eſtabliſhed by cuſtom a different mode of proceeding, which, though it was not expreſsly mentioned in the Peace of Weſtphalia, yet, by means of other ordinances, took another turn peculiar to itſelf. From the firſt inſtitution of the Aulic Council, it was very natural that, when caſes concerning grants from the Emperor, affairs of State, or even the inveſtiture of fiefs, came before the Emperor's Court, the Aulic Council could not determine any thing in ſuch caſes for itſelf, but had only to deliver an opinion to the Emperor, who gave his final deciſion at pleaſure. Thus, even in the firſt

ſtatutes

ſtatutes of 1501, it was ſaid that the Aulic Council ſhould deliver their written opinions to the Emperor, on all caſes which came before them for deciſion. Formerly it was uſual for Sovereigns to attend the conſultations of their Miniſters, in perſon, and take their verbal opinion; but it does not ſeem ever to have been the deſign that the Emperor ſhould attend the ſeſſion of the Aulic Council, himſelf: the written opinions, therefore, muſt be ſent to him, and the Council muſt wait for the reſult of his deciſion, for his approbation or rejection.

So long as the Aulic Council remained only a College of State, without exerciſing a formal juriſdiction, there was nothing to be ſaid againſt this inſtitution of the opinions: but the Aulic Council repreſented now a College of Juſtice. It might be expected therefore, that ſentences, in caſes of law, could not admit of any other deciſion than what was pronounced unanimouſly, or by a majority of votes, among the members of the Court, ſolely according to their conviction, and the duty of an impartial Judge. But what if, in caſes of law at preſent, the opinions of the Aulic Council are ſent to the Emperor's Cabinet? What! if there are other Miniſters conſulted, who ought to have nothing to do with the affairs of the Empire, and who are under no particular obligation to do juſtice? What! when even a confeſſor has influence, which it is ſaid was actually the caſe in the time of Ferdinand, when all the opinions of the Aulic Council firſt paſſed through the

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the hands of a confeffor, and he a Jefuit (*a*); fo that certainly, with refpect to the Germanic Empire, that Order was in poffeffion of no fmall part of the dominion of the world? And what, as was actually the cafe in feveral inftances, when the arguments urged in the opinions of the Council were not confined to the law, but had very often a political tendency? In fhort, upon every confideration, it may eafily be fuppofed that this article does not remain free from complaint, though in the form of the decrees which refult from the opinions, this expreffion is generally ufed: "His Imperial Majefty has been pleafed to "approve the moft humble opinion of the Aulic "Council."

Befides the Emperor's jurifdiction exercifed at prefent in the Imperial Chamber and the Aulic Council, as the two fupreme tribunals, and the higheft refort in Germany, the Emperor, according to the conftitution of the middle ages, could exercife a jurifdiction in the higheft refort, over mediate members of the Empire, in concurrence with their ordinary government; fo that one fubject might accufe another before the Emperor, as well as at the tribunal of his own particular Sovereign. This kind of Imperial jurifdiction in certain diftricts, was fometimes vefted

(*a*) On this account, it was propofed in 1644, to infert in the ftatutes for the Aulic Council, in future, that the Privy Council, and Council of Confcience, fhould be totally reftricted from acting in affairs relating to juftice.—MEIER, *Acta Comitial.* Vol. II. p. 280.

vested in a particular Judge, who in that case had the power of doing justice in causes which concerned both mediate and immediate persons and estates, in the district allotted him, though the appeal lay open to the Emperor. Many of these provincial tribunals of the Emperor, as they are called, have fallen into decay; because, as long as every State of the Empire, according to the present constitution, claims a perfect and exclusive jurisdiction within his own territory, and acknowledges no citation of his subjects, in the first resort, from the tribunals of the Empire, this kind of jurisdiction cannot well be reconciled with that of the States. Notwithstanding this, several of these courts of judicature existed at the time of the Westphalian Peace, as the Imperial Aulic Court of Judicature at Rothweil, and the Imperial Provincial Judicatory in Swabia. Both of these were respectively treated of in the negociations, because many of the States of Swabia and Franconia brought heavy complaints against them, and expressed a wish for their total abolishment. But that of Swabia was in the possession of the House of Austria: nothing, therefore, could be effected further in the Peace, than that the abolishment of the Emperor's provincial courts of judicature should be the subject of deliberation at the ensuing Diet. This was repeated again in the following capitulation, but has not yet been put in execution.

CHAPTER IX.

Affairs referred by the Congreſs of Peace to the enſuing Diet, for Examination and Deciſion.

The perpetual capitulation at the election of an Emperor referred to the next Diet, as well as the future mode of proceeding at the election of a King of the Romans—Several other things mentioned in the Peace, ſuch as, a ſtatute to regulate fees—improvement in the adminiſtration of juſtice—the police, and taxation of the Empire—ordinary and extraordinary deputations—direction of the aſſemblies of the States—Laſtly, among the various objects left for deciſion to the next Diet, one of the firſt was, the Imperial Poſt-office, which firſt raiſed the Houſe of Taxis—The Poſt of the Empire, in colliſion with the Auſtrian provincial Poſt, and the Imperial Court Poſt, granted to Baron de Par.

IT was the fate of ſeveral very important objects to be referred from the negociations of the Peace of Weſtphalia to the enſuing Diet; but only two of theſe, except the article above mentioned concerning the ban of the Empire in the year 1711, had the good fortune to be brought to any concluſion.

One of theſe concerned the capitulation of the Emperors. This had hitherto been drawn up by the Electors alone, and met with the approbation of the other States as long as the Electors appeared to have

no other object in view than the general welfare of the Empire. But in the capitulation at the election of the Emperor Mathias, they began to insert certain articles in support of themselves; as, for instance, that in certain cases only their consent, and not that of the whole Empire, should be necessary. The other States remonstrated against this, and met with so much support from the Congress of Peace, that it was acknowledged as just, that a permanent capitulation should be drawn up at the next Diet, with the common consent of all the States of the Empire; and that this should serve as a perpetual rule, and have the actual force of a general fundamental law.

This business did not, however, come actually into deliberation at the ensuing Diet of 1653, but first in 1664; and after fresh difficulties, which arose concerning the introduction and conclusion, was first agreed upon in 1711. By virtue of this agreement, the Electors retained their right of capitulating as usual with a new-elected King of the Romans, or Emperor, but not in the common affairs of the Empire, or matters which concerned the prerogatives of the States in general; and without altering any thing which was already admitted in the capitulation, without the consent of the other States, or infringing either the other laws of the Empire, or their prerogatives. Thus the capitulations which followed, continued upon the former plan till 1711. The capitulation was first permanently established at the election of Charles VI; and the order and contents of that has been ever since observed, except a few additions,

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additions, which have met with freſh oppoſition; and, on ſome ſubjects, the Electors have thought it neceſſary to make additions to the capitulation themſelves, though they made application to the Emperor in a collegiate addreſs, to propoſe them for deliberation at the general Diet.

Another object which met with almoſt the ſame fate as the perpetual capitulation, concerned the election of the King of the Romans. Although Germany was indiſputably an elective Empire, yet, at the time of the Peace of Weſtphalia, it was obſerved that the Imperial dignity had been for two hundred years, without intermiſſion, in the poſſeſſion of the Houſe of Auſtria. It was ſuppoſed that the Emperors had principally effected this, by endeavouring to get the Electoral College in their favour, in order to procure, from time to time, an election of a King of the Romans, and thus ſecure the ſucceſſion in future. As the Golden Bull takes no notice of the election of the King of the Romans, but only leaves the election of the Emperors to the Electors, the queſtion aroſe, Whether the Electors likewiſe had a right to direct the election of a King of the Romans, according to their own inclinations; and whether it would not be more adviſable at leaſt, not always to leave the Electors alone to determine the queſtion, Whether ſuch an election of a King of the Romans was neceſſary, and advantageous to the Empire? leſt, as it was eaſier for an Emperor to bias the Electors, than the whole Empire, in his favour,

favour, the Imperial dignity might, by theſe means, become as good as hereditary, merely in the Houſe of Auſtria. Both the Crowns of France and Sweden looked upon this as a very important affair, and ſupported, therefore, the inquiry with all their power. But in the Peace, nothing further was ſaid on the ſubject, than that it ſhould be diſcuſſed at the next Diet. Before the next Diet was convened, Ferdinand III. accompliſhed the election of Ferdinand IV, as King of the Romans, in 1653. Leopold was equally ſucceſsful in the election of Joſeph, in 1690; but in 1711, the two ſuperior Colleges of the Empire concurred in a reſolution "That the "Electors ſhould not haſtily proceed to the election "of a King of the Romans, during the life of the "Emperor; but in caſe the Emperor was abſent, "and remained either perpetually, or for a con"ſiderable time, abroad, or elſe could no longer "conduct the government, either on account of his "advanced age, incapability of ruling, or ſome "other urgent neceſſity, which required, for the "ſafety and welfare of the Empire, that a King of "Romans ſhould be elected during the life of the "Emperor." The laſt words have ſince occaſioned the queſtion to ariſe again, Whether in any other caſe of neceſſity, beſides thoſe mentioned above, the Electors had a right to decide the queſtion alone, or with the concurrence of the other States? If treaties admit of no general explanation according to law, the words of the treaty allow no right to the Princes to determine whether there is a neceſſity or not. For this reaſon, in the year 1764, the queſtion, Whether

CHAP. IX.

 an

BOOK VII. an election of a King of the Romans was necessary? was decided by a decree of the Electoral College alone.

A variety of other things, besides these, were referred, in the Peace of Westphalia, to the next Diet, which have never yet come to any explanation. Thus, in the first place, stated perquisites for the Imperial Chamber were to have been discussed, and a thorough improvement in the administration of justice. Of this, however, nothing further was accomplished in the recess of the Empire, than what was already resolved by the Assembly of Deputations, in 1643. The next thing was, that the laws respecting the police of the Empire, as they were enacted in 1548 and 1577, were to be again amended. This, however, rested in the attempt to bring the matter into deliberation at the Diet of 1670, and never came to a decree. Some few articles have been regulated by particular decrees of the Empire; such as the abuses of trade in 1731, the abolishment of Blue Monday in 1771 *, and the infamy of certain trades in 1772 †.

With

* It was formerly, and in many countries it is still the custom in Germany, for the journeymen, &c. employed in the lower kinds of trade, to consider every Monday as a day set apart for idleness, and no inducement can prevail upon them to apply themselves to work. Perhaps the custom was derived from the *post-festum* mentioned in the Canon Law; and the expression "Blue Monday" is supposed by some to have its origin in the bruises occasioned by the fist and cudgels, which were in frequent use among the drunken and disorderly; but, as we meet with a Blue Tuesday likewise, the derivation seems more probable which occurs in a manuscript Thuringian Chronicle.

"In

With respect to the taxation of the Empire, not only the grand question, Whether a majority of votes should CHAP. IX.

" In the sixteenth century, it was the custom in Germany to " ornament the churches on fast-days with blue; and at this " period the tradesmen began to keep the fasts by neglecting " their work. This was not only usual among the master trades- " men, but they indulged their servants likewise in the same " privilege. For want of employment, the common people had " recourse to drinking; and, instead of fasting, it soon became a " common proverb, HEUTE BLAUER FRASSMONTAG, To-day " is feasting Monday." This national custom, which was originally confined to innocent amusements on the evenings of the fast-days, soon extended itself to every Monday in the year. Blue Monday was now established; and the abuse prevailed to such a degree, that the day was soon distinguished by debaucheries of every kind, by tumults, and frequently by murders. The perpetrators of such acts were threatened with the severest punishment; but all the territorial edicts were fruitless, till the matter was seriously taken up by the Diet. This was occasioned by the company of shoe-makers at Augsburg, in 1726, who excited their fellow tradesmen at Wurtzburg, by letters, to be riotous. The magistrates at first prohibited the correspondence: this prohibition they considered as an infringement of their rights. The rioters were soon joined, as usual, by a number of ill-disposed persons, ill treated all who opposed them, and made the affair of a still more serious nature, by encouraging the same conduct in other towns. At last, upwards of a hundred members of this unconstitutional society left the town, and sent information to Leipsic, Dresden, Berlin, &c. of their proceedings, in the following terms: " We have been under the necessity of adopting this measure to " preserve our rights; and inform you, that no man who is an " honest fellow (BRAVER KERL) will ever go again to work at " Augsburg: if he does, he may expect the consequences, and " that soon." This caused a general alarm throughout the country. The abuses which prevailed among the tradesmen were of too much consequence to the towns of Germany, and trade in general, not to

BOOK VII. should be valid in this point? was left to the decision of the ensuing Diet, but a variety of other things which

to be noticed at the Diet. An edict was published in 1731, by virtue of which, not only every abuse was to be remedied, but the custom of keeping Blue Monday abolished entirely. The edict was but little attended to, except in Brandenburg. In many places it was not even promulgated. The Emperor Francis renewed it in 1764, and a decree of the Empire was passed to abolish Blue Monday in 1771-72; but notwithstanding this, the old custom prevails, and every Monday throughout the year, in most of the German territories, is still Blue. In the hereditary dominions of Austria, not only laws have been enforced, but various other means have been adopted, for this salutary purpose. Even in the University of Gottingen, in the Hanoverian dominions, where there is more Aufklärung, as the Germans admirably express themselves, or a higher state of refinement, this custom is still so prevalent, that I believe I may venture to affirm, that no journeyman taylor can be prevailed upon to work on Monday by any prospect of reward, but generally devotes that day to the joys of Bacchus.

† The ancient Germans knew nothing of companies, or guilds, among tradesmen. Tacitus says, "*Servos dominis vestes parare.*" De M. G. cap. 25. Many trades were for a long time considered as dishonourable or infamous, because they were not carried on by freemen, but by people who were originally excluded from the towns: among these were millers, who were left in the country for the convenience of the water; weavers, who were employed to make the frocks for the common peasants; tanners, because it was thought that the smell occasioned by their business might infect the air, &c. These were either totally excluded from living in the towns, or else suffered only in the suburbs, and of course were deprived of the rights enjoyed by freemen. As long as they were considered in the light of villains or slaves, it was difficult to wipe off the ignominy of their professions. At last, the law of the Empire above mentioned ordered, that weavers, barbers, shepherds, toll-gatherers, fifers, trumpeters, &c. should not be excluded from the rights of citizens, provided they were not in other respects

which ſtood in connexion with it. In the manner in which the accidental matricula of the year 1521 became a perpetual ſtandard for the taxation of the Empire, and through the various changes which the States had ſince that period undergone, there could not fail to be a great deficiency in the proportion of the contingents which every State ought to contribute. Many who were rated as immediate States and members of this or the other Circle, ſince that period had the fate to become ſubject to others: many were ſo reduced in their circumſtances, that they not only applied for their aſſeſſments to be reduced, but to be excuſed paying their arrears; others, on the contrary, were very well able to bear an additional impoſt. It was certainly worth while, therefore, to expect that all the applications for moderation and remiſſion, reſtitution of alienated States, and ſuch as were fallen under the ſovereignty of others, or, according to the language of the laws, exempted States, and the completing of the Circles of the Empire, ſhould be examined at the next Diet, and an entirely new and more accurate matricula formed. If this

had

reſpects ineligible; whereas before, neither they nor their children were admiſſible to any guild or office. The only perſons now excluded are the SCHINDER, or hangmen, with whom it is ſtill the greateſt diſgrace to aſſociate, or even to drink out of the ſame veſſel with. They are called SCHINDER, from the word SCHINDEN, to ſkin; becauſe it is their office alone to remove and ſkin the dead carcaſes of animals, which no one elſe will touch; a cuſtom derived from the Levitical law, which forbids the touching of any thing unclean. The SCHINDER hang, break upon the wheel, torture, &c.; the SCHARFRICHTER, or firſt executioner, who beheads, is not infamous, becauſe he does not touch the criminal.

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had been done, the queſtion reſpecting the validity of the majority of votes in affairs of taxation, would have met with fewer difficulties; for the moſt important difficulties always aroſe from the complaint of many, that they were ſubjected, by the majority of votes, to diſproportioned grievances, and that no tolerable proportion prevailed, either in the number of votes, or the ſum which a State was expected to contribute. All theſe things, it is true, were recommended, in the new capitulation of 1711, to the notice of the Diet; but ſtill remain in the ſtate in which they were.

In ſome articles of the Peace of Weſtphalia, was mentioned the ordinary Aſſembly of Deputations, the ſettlement of which was referred to the Diet. In the year 1548, it was agreed, that when the time would not admit of convoking a general Diet, or when it was already aſſembled, of continuing it, to convene or continue the ſeſſion of the Electors alone, and a certain number of Princes, Counts, Prelates, and Imperial cities, deputed from the other States, to tranſact ſuch buſineſs of the Empire which could not admit of delay, or could be better managed by a few perſons than by a numerous aſſembly. Such Aſſemblies of Deputations which might be conſidered as Diets in miniature, as the proceedings were almoſt wholly the ſame, had been ſeveral times of great advantage, of which the receſſes of the Aſſemblies of Deputations, of the years 1564, 1571, and 1600, are the greateſt proofs. The Peace, however, eſtabliſhed here likewiſe the obſervance of an equality of religions, and only left the completing the deficiency in the number of perſons on the

the Protestant side (*a*) to the ensuing Diet, and the regulation of this ordinary Assembly of Deputations, for the common welfare of the Empire (*b*). This was accomplished in such a manner, at the next Diet in the year 1654, that as many Protestant votes of Princes, Counts, and Imperial cities, were added as were necessary to preserve a perfect equality of the two religions; because none of the Catholics who were already appointed, would resign, although among the Electors, four were Catholics, and three Protestants. The Recess of 1654 enacted, that at the next Assembly of Deputations, one of the three Protestant Electors should alternately have a fourth vote (*c*). An Assembly of Deputations was held, in conformity to this rule, in the reign of Ferdinand III, and continued in the reign of Leopold; but it was dissolved, to make room for the Diet, which has, since that period, accidentally become perpetual; and of course therefore, as long as it continues, the ordinary deputations are become unnecessary. It was again proposed, in the capitulation of 1742, to establish the ordinary deputation in its former state and activity: but the persons who at present compose the Diet, are themselves so few in number, that there is no reason therefore to change it into an Assembly of Deputations, the very object of which is lost, as long as the Diet itself exists; not to mention the difficulties respecting the religious equality among the Electors, and other circumstances which have since arisen.

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(*a*) Peace of Osnabruck, Art. v. § 51.

(*b*) Peace of Osnabruck, Art. viii. § 3.

(*c*) Recess 1654, § 191, 194.

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Many years ago, before the ordinary Aſſembly of Deputations was thought of, there was a deputation in uſe of a very different kind, which, by way of diſtinction is now called the EXTRAORDINARY DEPUTATION; and for the regulation of which, an article was expreſsly inſerted in the Peace of Weſtphalia: for inſtance, whenever any thing was to be tranſacted in the name of all the States, either at the place where the Diet was held, as complimenting the Emperor, or other perſon of diſtinguiſhed rank; or out of the Empire, as attending a congreſs of peace, or viſitation of the Imperial Chamber, &c. a certain number of States were to be appointed for this purpoſe from all the three Colleges. Here, likewiſe, the Peace expreſsly extended the ordinance, that there ſhould be a perfect equality among the deputies in point of religion. This has been the occaſion of freſh difficulties; for the queſtion aroſe in the firſt place, Whether the election and nomination of ſuch deputies of both religions ſhould be left to the religious parties alone? or whether both the Proteſtant and Catholic deputies ſhould be nominated by a collegiate decree paſſed by the majority of votes in the full Council of the Princes? In the latter caſe it was probable, that although the number of the perſons of both religions might be equal, yet that they would not be perſons of the ſame weight, but powerful Catholic States, and leſs powerful Proteſtant ones. In the firſt inſtance which occurred after the Peace, each party nominated their own deputies (*a*); and the Proteſtants have

(*a*) A deputation was reſolved upon in the College of Princes, on the 7th of May, 1653, to collect their objections to the capitulation;

have found it worth their while to continue this custom, and not submit to any proposals for appointing their deputies in any other manner (*a*). CHAP. IX.

Besides this, a singular difficulty presented itself, with regard to the Comitial Deputation in particular. It was common, when deputies were nominated in the place of the Diet, for the Electoral College to appoint for that purpose the first spiritual and first secular Elector, which were formerly the Elector of Mentz and Elector Palatine; and since the year 1623, the Elector of Mentz and the Elector of Bavaria. But, as the Peace of Westphalia required an equality of religion, either the Elector of Saxony must take place of the Elector of Bavaria; or else, as the Elector of Bavaria claimed a perpetual right of attending such deputations, two Protestant Electors: those of Saxony, therefore, and Brandenburg, must be added to the Electors of Mentz and Bavaria, whenever such an extraordinary deputation was held. The same difficulties occurred among the first members of the College of Princes; and since that time, fresh disputes have arisen again among the Electors. At last it was resolved, that the appointment of such comitial deputations, to which each of the three Colleges

tion; and a resolution passed on that subject, "that an equal number "of deputies should be appointed of both religions, and the nomi- "nation of them left to the religious parties, who would be most "capable of determining that matter among themselves."— SCHAUROTH's Collection of the Resolutions of the Protestant Body, Vol. I. p. 413.

(*a*) The resolutions made on this subject by the Protestant Body, November 4, 1664, and December 6, 1710, occur in SCHAUROTH, p. 392, &c.

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Colleges used to send their own members, should be left solely to the Elector of Mentz; but always with this reservation, that it should not be considered as a precedent for any right to the prejudice of others.

As inconsiderable as this matter appears, yet in many respects it may be of great importance. Among other things, custom has established the public presentation of every resolution of the Empire, to the Emperor, or in his absence to the first commissioner, through an extraordinary deputation. The resolutions of the Empire are otherwise only signed and sealed in the Chancery of the Elector of Mentz, with the words CHURFURSTLICH MAINZISCHE CANZLEY, (Chancery of the Elector of Mentz). What the expediting of so important an instrument seemed to lose in solemnity, was sufficiently supplied by the members of the three Imperial Colleges publicly presenting the resolutions of the Empire themselves. As the Elector of Mentz draws up the resolutions himself alone, and therefore has both the expediting and public presentation of them solely in his power; may not this circumstance, in time, become a matter of great importance? In my opinion, this is sufficient cause for the patriotic wish, that extraordinary comitial deputations might be permanently established. When an extraordinary deputation is to be nominated, exclusively of the Diet, a perpetual deputation is less to be insisted upon, but every deputation ought to be appointed according to particular circumstances.

Besides

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Besides the affair of deputations, the Peace of Westphalia at last mentioned the direction of the general Diet *; which was to be discussed in like manner when the Diet was next assembled. It was very natural that in all assemblies of the States, from their earliest origin, for the preservation of order in business and deliberations, that some one should first open the meeting, make the necessary motions, cause the others to deliver their votes upon the subject, and collect them according to their equality or majority, in order to form a resolution. In short, no deliberation could well take place without a certain *directorium*, under which word every thing of this kind was afterwards comprehended. Every College had it certainly in its power to appoint its own director, by means of a free election. In general it happened that the direction was undertaken by the first in rank. The College of the States of the Empire did not, by this, cease to maintain a perfect equality among its members: it was not like a chamber of finance, consisting of several counsellors, where the Prince may appoint a President invested with any degree of power he pleases, and who in that case has the right of speaking authoritatively; but here, only one of the first rank had the direction, among several members of a collegiate assembly, perfectly upon an equality, *primus inter pares*.

Thus, for instance, the Elector of Mentz, by being the director of the Electoral College, was not entitled to

* DIRECTORIEN DER REICHSSTANDISCHEN VERSAMMLUNGEN.

to consider his fellow Electors as if they were subordinate to him, to conduct himself in any arbitrary manner, or speak as if he was endowed with any authority. It is really a pleasure to read how the Elector of Mentz, at the time when the Electors used to assemble in person, conducted himself on all occasions: for instance, when the question was, What business was to be transacted during the next session? he held a friendly conference with the other Electors, and was guided by their decision (*a*): so far was he from attempting to determine, according to his own inclination, what subjects should be proposed for deliberation at the different Diets!

In fact, the direction was considered as an office attended with trouble, rather than as the idea now is, that it has any superiority over persons who are subordinate or subalterns. When the Electoral College was represented by envoys, and the Elector of Mentz usually sent more than one, the first envoy was then considered

(*a*) Thus, in the journal of the transaction of the election of the Emperor Mathias, we meet with the following particulars:

May 19, 1612. It was resolved to meet again in council to-morrow morning, God willing, at seven o'clock.

May 20. When the Electors met at seven o'clock, agreeable to yesterday's appointment, Mentz introduced the deliberations in the following manner: "Whereas the reading of the capitulation was begun yesterday. His Electoral Highness referred it to the decision of his fellow Electors, Whether it was their will and pleasure that the reading of it should be continued? and as all the Electoral Princes gave their consent, the reading of the capitulation was continued."—Möser's Remarks on the Capitulation of the Emperor Francis, Appendix II. p. 420.

considered as the proper representative, and as such delivered his vote; the second or last in rank, who generally undertook the office of Chancellor, was for the most part of the profession of the law, while the first envoy was a Canon, or other person of rank, and had the care of the DIRECTORIAL MINISTRY, for so the term was here used in the real sense, of a service, or office. So little was the direction considered at first as a precedency, which could claim any degree of authority.

In the course of time, however, those who had the direction at the Diets began considerably to extend the limits of their office; to commence the session as it suited their own convenience, choose the subjects for deliberation themselves, convoke, dissolve, collect the suffrages, and act in many instances in a partial and arbitrary manner; in short, to take every opportunity of assuming certain prerogatives peculiar to themselves. The Elector of Mentz was disposed to make a double profit of the advantages attending the direction, as he was at the same time Arch-Chancellor of the Empire, and the execution of all State affairs was committed to his care. On one occasion, however, he was reminded, that his direction was originally an office imposed upon the lowest of his envoys; that no magisterial power was annexed to it, but that it was merely a service, and must remain so.

In the College of the Princes, the affair was of greater consequence. Ever since the time of Charles

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Charles V, the Austrian ambassador had had the direction alternately with the envoy of the Archbishop of Salzburg, according to the subject of debate, and thought he could speak with greater authority, because the Sovereign whom he served was at the time in possession of the Imperial dignity. In all the other collegiate meetings, likewise, of the Counts, Prelates, and Imperial cities, the affair deserved all possible attention. One circumstance, however, came into particular consideration, relative to the direction of the Circles; that as the summoning Princes were invested by the Emperor and Empire with a part of the executive power, a perfect equality without subordination could not be so well maintained, as in assemblies which were merely collegiate: at least no conclusion could be drawn from what was done in such cases by virtue of the constitution of the Circles, for the direction of the other States. Complaints of all kinds were made upon this subject in the negociations for peace; they could not, however, come to any examination, but were referred to the Diet, and still wait, with a number of other articles, for further inquiry.

Besides the objects mentioned above, which were specifically referred to the Diet, many other things occurred in the negociations, which were comprehended under the general term of SIMILAR OBJECTS; and which the Congress could not descend to the minute examination of, but referred them therefore to the future inquiry of the States. One of the principal

cipal things of this kind was the regulation of the Poſt, which deſerves therefore a particular explanation. CHAP. IX.

In former times there were only a few Imperial cities, as Nurenberg, Cologne, Bremen, &c. which had any regular method of conveyance. From thoſe towns, a carriage or a veſſel went regularly every week to ſome diſtant place, as from Nurenberg to Hamburg, or Vienna, by which any body might convey whatever they pleaſed for an equitable price. In other places, where meſſengers of chancery were kept, and often diſpatched upon the buſineſs of government, it was uſual to ſend letters by them, or elſe by butchers, who attended diſtant markets to purchaſe cattle. Inſtead of this, after the firſt inſtitution of regular poſts in France, in the year 1463, a poſt was eſtabliſhed in Germany, in conſequence of a propoſal made to the Emperor Maximilian I. by Francis de Taxis, to eſtabliſh a horſe poſt between Vienna and Bruſſels. The Emperor Maximilian appointed him his poſt-maſter in the year 1516. After his death in 1518, his nephew John Baptiſta continued to hold the office in the reign of Charles V, and his ſon Leonard was appointed by that Emperor in 1543 poſt-maſter general in the Netherlands; and in the ſame year a regular horſe poſt was eſtabliſhed from the Netherlands through Liege and Treves to Spire, and from that place, through the country of Würtenberg, Augſburg, and Tyrol, to Italy. In the year 1563, this ſame

Leonard

BOOK VII. Leonard de Taxis prevailed upon the Emperor Ferdinand I. to iſſue an order to all the Electors and Princes, to admit the letters patent granted to him by Charles V, and allow his poſts free paſſage both by day and night. The troubles in the Netherlands almoſt put an end to the whole buſineſs: but in 1595, when Leonard de Taxis was raiſed by the Emperor Rudolphus II. to the rank of Baron, and appointed poſt-maſter-general of the Empire, the matter was firſt permanently ſettled, and particular treaties made with ſeveral of the States through whoſe territories the poſts were obliged to paſs. In the year 1603, another poſt was eſtabliſhed from Frankfort to Rhinehauſen, to open a communication with France; and when Leonard's ſon Lamoral, Baron de Taxis, received the inveſtiture of the office of poſt-maſter general of the Empire from the Emperor Mathias, for himſelf and his heirs, ſeveral new poſts were eſtabliſhed in the Palatinate, and in Heſſe, to Nurenberg, Leipſic, Hamburg, &c.

Lamoral was already raiſed to the rank of Count, and boaſted, before the year 1626, that the annual profits of his poſts amounted to more than an hundred thouſand ducats *. In conſequence of an order iſſued by the Emperor Ferdinand II. November 23, 1627, this poſt of De Taxis was eſtabliſhed, during the wars of thoſe times, as one of the Emperor's royal prerogatives, throughout Germany.

In

* In thoſe days a moſt aſtoniſhing ſum; amounting, in Engliſh money, to 47,222 l. according to modern calculation.

In the mean time, the Emperor Ferdinand II. had inveſted Baron de Par, in 1624, with the poſt in his own hereditary dominions of Auſtria, with the title of Poſt-maſter of the Imperial Court. In this latter quality he claimed the right of following the Emperor's Court out of the hereditary dominions; and in that caſe, without regard to the poſt of Taxis, of appropriating the whole inſtitution himſelf. In oppoſition to this, however, Count de Taxis procured a reſolution of the Electoral College in his favour, June 12, 1641, which was preſented to the Emperor for confirmation (*a*), though Par's poſt was continued in the Emperor's territories without further interruption.

As the Houſe of Auſtria had eſtabliſhed a private territorial poſt in that country, notwithſtanding the office of poſt-maſter general of the Empire, which was held by De Taxis, the other Princes thought they had an equal right to do the ſame. Thus, in the year 1640, Roger Hinüber, a merchant of Hildeſheim, procured a grant from Duke George of Brunſwick-Luneburg, to eſtabliſh a poſt in his dominions. The Imperial cities, likewiſe, did not conſider themſelves under any obligation of diſcontinuing their mode of conveyance, which cuſtom had ſo long eſtabliſhed, on account of the poſt of De Taxis.

The Houſe of Taxis, on the other hand, appealed to the inveſtiture of the office of poſt-maſter general of

(*a*) Lunig's Archives of the Empire, Vol. IV. p. 544.

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of the Empire, which had once been granted to it, and to the patent which the Emperor Ferdinand II. promulgated on the 14th of Auguſt 1635. Even an edict occurring in the Roman code of laws (*a*), was alledged as a proof that the prerogative of eſtabliſhing poſts was a reſerved right of the Emperor's, which no one elſe could claim, unleſs he expreſsly inveſted him. This Roman law mentions a ſort of relay, which only two officers of government, there mentioned, had a right to, beſides the Emperor. A very fine attempt indeed, to found the excluſive rights of ſovereignty of the ſupreme head of the Germanic Empire, on the prerogatives and orders of the ancient Emperors of Rome and Conſtantinople!

On the other ſide, great complaint was made againſt the immoderate charges of the poſt, which were ordered by the Peace of Weſtphalia to be reduced (*b*). The diſputes which ſtill remained were not decided in the negociations, but left with other affairs, which were in the ſame ſtate, to the deciſion of a future Diet; upon which a paſſage was inſerted in the capitulation of 1658, with reference to the Electoral reſolution of 1641, in favour of the poſt of De Taxis, againſt the Imperial Court poſt of Par. Though the Elector of Brandenburg had eſtabliſhed a poſt in part of his territories, at the end of the war of thirty years, and the Houſes of Saxony, Brunſwick, and

(*a*) L. 9. C. *de Curſu publico.*

(*b*) Oſnabr. Peace, Art. ix. § 1.

and Hesse, afterwards followed his example; yet neither those territorial posts, nor the posts of the Imperial cities, were mentioned in the capitulation: on the contrary, the remonstrance made by the Elector of Brandenburg, against the insertion of any thing to the prejudice of his prerogative of establishing a post, occasioned a declaration, that the above passage of the capitulation had not the territorial rights of the Electors for its object, but only the collision of the offices of post-master general of the Empire, and of the post-master of the Emperor's Court (a).

Neither was any decision made in the deliberations concerning a perpetual capitulation: this matter, therefore, was reserved for the ensuing Diet, and has not yet been settled. The Imperial posts in the territories belonging to the States have been mentioned on another occasion since the year 1690, but with the addition of this remarkable expression, "Where such "Imperial post-offices are already established, and "have been customary." According to this determination, the Imperial posts, or those of De Taxis, are only allowed in those places where such offices are already established, and are customary. Where this is not the case, no State of the Empire is under any necessity of allowing them; for at the time when the post of De Taxis was established, the sovereign rights of the States were so fixed, that none of them were under

(a) MOSER'S Remarks on the Capitulation of Charles VII. Vol. II. p. 676.

under the neceſſity of admitting any ſuch inſtitution againſt their will. Wherever, therefore, the Houſe of Taxis wiſhed to eſtabliſh a poſt, they were obliged to apply for permiſſion to the government of the country. Neither could a State be prevented from eſtabliſhing any new inſtitution, ſuch as this was, by virtue of his own territorial ſupremacy: they ſtood in no need of any grant for that purpoſe from the Emperor; nor could they meet with any reſtriction, except by ſuch ſtipulations as were made by the States themſelves. The Houſe of Taxis, however, which ſince that period has been raiſed to the princely rank, has ſufficient reaſon to be contented with its preſent condition, conſidering the number of poſts which ſtill exiſt in many parts of Germany *, the annual profits of which are computed at a million of rix-dollars †.

* The different poſts in Germany are diſtinguiſhed by the livery of the Court to which they belong. The Imperial livery is yellow, faced with black, with a black eagle on the arm; the Hanoverian, red and blue; that of Heſſe, blue and red, &c. The drivers of the poſt waggons, or ſtages, have the ſame dreſs, with a horn, ſomething like a French horn, hung acroſs their ſhoulder, which they blow on the approach of any other carriages, which are obliged to give way to them.

† 166,666 l. ſterling, reckoning ſix rix-dollars to a pound.

CHAPTER

CHAPTER X.

Negociations concerning the Execution of the Peace, and the Demands of the Swediſh Army.

Difficulties ariſing reſpecting the execution of the Peace—Unexpected demands of the Swediſh army, which were compromiſed for five millions of dollars, and levied on ſeven Circles—Similar demands made by Heſſe Caſſel—Debate on the meaſures to be purſued, to execution of the Peace immediately after it was ſigned—Among other things, that the money due to the Swedes ſhould be paid at ſtated periods, the garriſons at ſuch times evacuated, and the troops diſbanded—Validity of the Peace eſtabliſhed for the future as a fundamental law of the Empire—All the parties concerned to become its guarantees, by virtue of which, one ſword was enabled to keep the other in its ſcabbard—Dark proſpects which appeared immediately after the Peace was ſigned—The Emperor's orders for its execution—Controverſial decree of the Congreſs at Munſter—Negociations reſpecting the execution of the Peace at Prague and Nurenberg—Receſs—Deputation of the Empire appointed, and liſt given in of caſes of reſtitution—The Peace acquires its proper firmneſs—Difficulties at laſt removed, reſpecting the reſtitution of the high Imperial office in the Palatinate—and the city of Frankenthal.

WHAT I have already ſaid, may afford ſome idea of the extenſive influence which the Peace of Weſtphalia had upon the whole conſtitution of the Germanic Empire: but juſt as the negociations were ſo far advanced, that the final concluſion of the

Peace,

Peace, and the ſigning of it, ſeemed on the point of execution, two new ſubjects aroſe, which were of the greateſt conſequence; and which, notwithſtanding the difficulties attending them, it was neceſſary to adjuſt.

In the negociations themſelves, almoſt every article was ſettled by the Swediſh plenipotentiaries, as they now ſtand in the firſt fifteen articles of the Peace of Oſnabruck. The only queſtion remaining was, How the various articles agreed upon ſhould be put in execution, immediately after ſigning the Peace, and how their validity ſhould be ſecured for the future? The principal objects were, partly the various caſes of reſtitution, on account of the general amneſty, to ſee that all the grievances which had been mentioned, were done away; and partly the evacuation of the fortreſſes and countries occupied by foreign troops, to ſee that the forces which had been employed were all diſbanded.

Before the deliberation took place upon this ſubject, John Erſken, a deputy, who was ſent from the Swediſh army, beſides the Envoy, laid the propoſition before the Congreſs of Oſnabruck, that, as at leaſt ten months would be neceſſary before the Peace could be finally accompliſhed, and the forces diſbanded; and as the army, during that time, would conſtantly have it in their power, by being diſperſed throughout Germany, to exact contributions by threatening conflagration; they had made a calculation,

tion, to prevent this; according to which, fifty ſquadrons of horſe ſhould each of them receive 19,064 rix-dollars monthly; ſix regiments of dragoons, each 10,980 rix-dollars; ſixty-three regiments of infantry, each 8,619 rix-dollars 12 good groſchen; the artillery, 100,000 rix-dollars; and the generality, or ſtaff-officers, 220,507 rix-dollars 12 groſchen; which, all together, for ten months, amounted to 20,000,000 of dollars*.

Erſken, by virtue of his commiſſion from the Swediſh army, required that ſecurity ſhould be given for the payment of this ſum in ready money, by the whole Germanic Empire; that they might then begin to diſband the army, and evacuate the fortreſſes; and that, in that caſe, there ſhould be no further contribution exacted; but at the ſame time, with the reſervation of the pay for the ſupport of the garriſons and other forces, as long as they ſhould continue in ſervice.

This unexpected demand cauſed univerſal aſtoniſhment; yet the Swediſh Envoys declared it was impoſſible for them to deſiſt from their claims. The Congreſs therefore, though very reluctantly, was obliged to enter into a negociation on the ſubject. At firſt, inſtead of twenty millions of dollars, an offer was made of two millions of florins. Mr. Erſken inſiſted upon ten millions of dollars; he was offered

* A dollar is uſually reckoned at 3*s*. 4*d*. or 24 GUTGROSCHEN.

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offered three millions of florins, and afterwards four. Erſken then reduced his demand to eight millions of dollars, and aftewards to ſeven. At laſt, in June, 1648, they agreed upon five.

The demand was made, in fact, upon the whole of the Germanic Empire; but of the ten Circles into which Germany is divided, in the firſt place, that of Burgundy was not included, becauſe the King of Spain, who was then in poſſeſſion of it, took no part in the Peace. The Houſes of Auſtria and Bavaria claimed the ſame right of making a ſimilar demand for their reſpective armies. The Circles of Auſtria and Bavaria were excluded, therefore, from the obligation; and the other ſeven Circles were under the neceſſity of ſubmitting to bear the whole burthen of the payment.

The Landgrafin (*a*) of Heſſe-Caſſel made a ſimilar demand of ſix hundred thouſand dollars, for indemnification, and for evacuating the places garriſoned by Heſſian troops. The payment of this was aſſigned to the Archbiſhopricks of Mentz and Cologne,

(*a*) This is the title given in Germany to the conſort of the Landgrave. All the ladies, even in private life, take the titles of their huſbands, with the addition of the ſyllable IN; as, HERR GENERAL, FRAU GENERALIN, HAUPTMAN (Captain), HAUPTMANIN. Even profeſſions, learned or mechanical, are diſtinguiſhed in the ſame manner; the wife of a doctor is called FRAU DOCTORIN, or of a SCHUSTER (ſhoemaker) FRAU SCHUSTERIN, &c.

Cologne, the Bishopricks of Paderborn and Munster, and the Abby of Fulda. The measures necessary for the execution and future preservation of the Peace, still remained to be determined. With this view, it was resolved that the ratification of the instruments should be exchanged on all sides, in eight weeks after the Peace was signed by the Envoys; that all hostilities should cease as soon as the Peace was signed; and the articles agreed upon, immediately be put in execution: that, for this purpose, an Imperial edict should be issued, by virtue of which, every one, whom the Peace enjoined to make any restitution, or perform any stipulation, should be directed to do the same in the time allotted from the signing of the Peace, until its ratification: that the edict should give orders to the summoning Princes, as well as the Colonels of the Circles, to afford the aid which should be found requisite, upon the application of those who, by virtue of the Peace, claimed a restitution, unless when they themselves were interested, or declined the commission; in which case it should be undertaken by the summoning Princes, or Colonels of the adjacent Circles: that every one also should be at liberty to petition for an Imperial commission, for the execution of whatever the Peace ordained in their favour; and that, for this purpose, each party should propose two or three commissioners, and that the Emperor should choose one from each side, with the due observance of an equality in point of religion.

CHAP. X.

With

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With reſpect to the five millions of dollars conditioned by the Swediſh army, it was agreed to pay eighteen hundred thouſand of them in ſpecie, immediately after the Peace was ſigned, and twelve hundred thouſand in aſſignations on certain States of the Empire, and to diſcharge the two remaining millions at the end of the years 1649 and 1650; that, in conſequence of this, the evacuation of the garriſons, and diſbanding of the forces, where the different Powers did not think proper to march any of them back into their reſpective countries for their own ſecurity, ſhould take place with equal expedition; and after a conference of the commanding officers of the different armies on the ſubject, be immediately put in execution.

That no preſent or future proteſt, remonſtrance, or any other oppoſition, from whatever quarter it might ariſe, ſhould be regarded: that the Peace itſelf ſhould be conſidered as a fundamental law of the Empire, and ſerve as an obligatory rule to all and every individual member; and that it ſhould, for this reaſon, be inſerted in the next Receſs and in the Capitulation of the Emperor, That if any perſon ſhould be found acting in oppoſition to it, he ſhould be declared guilty of a breach of the Peace, and be compelled to make the fulleſt ſatisfaction.

On the other hand, that all who had any concern whatever in the articles of the Peace, ſhould be under an obligation to defend their contents againſt every attack. If it happened that any thing occur-

red

red to their prejudice, the injured party ſhould firſt of all exhort thoſe by whom they were injured, to abſtain from every act of violence, and procure the affair either to be ſettled amicably, or in the courſe of law: but if the affair could not be ſettled in either manner, in the ſpace of three years, that every one who had any part in the Peace, ſhould conſider himſelf bound to ſupport the injured party both by counſel and with power, and even have recourſe to arms for the reſtoration of juſtice, as ſoon as the ſuffering party proves that they could neither procure their right by amicable or legal means, but without treſpaſſing on the juriſdiction of any one elſe, or infringing the adminiſtration of juſtice in general.

Through this article, which was inſerted in equivalent terms, in the Peace of Munſter, as well as in that of Oſnabruck, the two Crowns of France and Sweden were firſt laid under the obligation, and acquired the right of guarantee over the whole contents of the Peace, and therefore almoſt over the whole conſtitution of the Empire; of courſe, only in caſes where complaint was made of a tranſgreſſion of the order of the Peace: beyond this, they have no right to interfere with the affairs of the Empire. Thus, for inſtance, both theſe Powers certainly had a right to watch, that the Electors do not refuſe to admit the Princes to their negociation reſpecting the mode of electing a King of the Romans: but as this buſineſs was determined by the ſtipulation made in 1711, whether

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whether France has ſtill a right to conſider every election of a King of the Romans as an object of the guarantee, is a different queſtion. But if both theſe foreign Powers ſhould maintain this, and in Germany the very contrary ſhould be believed, who ſhall decide the queſtion? So that caſes may occur, in which even this queſtion could not be decided in any other way, than by the fortune of war.

This guarantee of the Peace, however, is not only committed to theſe two Crowns, but to all and every individual who has any concern in it; that is, to all thoſe, on both ſides, who were concerned either as belligerent powers, or in the concluſion of the Peace, and to all their allies. If, therefore, the Emperor and all the Catholic States were concerned on one ſide, in an affair of religion, and all the Proteſtant States on the other, in caſes where a Catholic member of the Empire treſpaſſed againſt the preſcriptions of the Peace, to the injury of a Proteſtant, the guaranteeing of the Peace, is certainly a duty incumbent on the Proteſtant party. Theſe have a right, likewiſe, in every ſuch caſe, to ſupport the injured party, both by advice and actual aid, and even to have recourſe to arms, without any thing elſe being requiſite, than application from the injured party, after the expiration of the term of three years allowed to ſettle the affair in, either amicably, or in the courſe of law.

Otherwiſe, according to the preſcriptions of the Peace, no State has any right to revenge himſelf by

force of arms, or other hoſtilities, but muſt be ſatisfied with the deciſion of the law; yet the Peace itſelf dare not either be tranſgreſſed, or ſlighted. In this caſe, according to the expreſs words of the Peace, there is an exception of that ſpecies of ſelf-defence, neceſſary to guarantee the Peace. Thus a new inteſtine war might break out in Germany; a civil war of the moſt dreadful nature; a religious war, ſuch as that which laſted for thirty years! There certainly remained a poſſibility, and the ſequel of this hiſtory proves by more than a ſingle inſtance, that this poſſibility has been almoſt realized. But ſhould this actually happen, which would be the gaining party? —Both parties would certainly be loſers. What is the reſult, then?—What! but that both parties have reaſon to preſerve the Peace of Weſtphalia, which has once been purchaſed at the expence of ſo much blood, and at the coſt of the whole of Germany, ſacred and inviolable, and to avoid the moſt diſtant meaſure which may occaſion the intervention of the guaranteeing powers; to live united by fraternal bonds, as members of the ſame State, or at leaſt never to forget that one ſword ſhould keep the other in its ſcabbard.

Immediately after the Peace was ſigned, both at Munſter and at Oſnabruck, October 24, 1648, there was little or no proſpect of its ever being put in execution. The Imperial edict, which had been reſolved upon, was publicly iſſued November 7, 1648; but, inſtead of the eight weeks, in which the ratification

was

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was expected, upwards of three months elapſed before it took place. Not a ſtep was taken in compliance with the orders of the edict; nothing was heard but contradictions and difficulties, which aroſe in every quarter of the Empire: the armies remained as they were; the pay which was allotted them, was the occaſion of large ſums of money being daily drained from the country; neither could the Congreſſes of Munſter and Oſnabruck be diſſolved: and, in this ſtate of things, what would have been the conſequence, if careful proviſion had not been made, in forming the Peace, for the proper execution of it?

At laſt, after the ratifications were exchanged on the 8th of February, 1649, a more particular reſcript from the Emperor, which was formed upon a plan propoſed by the States, was ſent on the 2d of March, 1649, to the ſummoning Princes, directing that the reſtitutions therein ordered, ſhould be made, according to the letter of the Peace, or at leaſt its general principles, at the coſt of thoſe who were obliged to make them; and that all doubts of importance, which might ariſe concerning the mere fact of poſſeſſion, ſhould be examined in as ſummary a manner as poſſible, at the place itſelf.

The Congreſs at Oſnabruck, where moſt of the Proteſtant party was, had ſcarcely ſeparated, which they did with the greateſt confidence, in March, 1649, before it came into the heads of the States, who were ſtill aſſembled at Munſter, on the 13th

13th of April, 1649, to add another article to the Peace: That, in order to accompliſh the different objects of the Peace, the troops ſhould be firſt diſbanded, and the fortifications evacuated; and after that, the reſtitutions take place as they were ordered. If this article had been complied with, very few would have obtained their promiſed reſtitutions, or what was otherwiſe to be performed, when they could no longer depend upon a military force. The Swediſh Envoys, therefore, very naturally proteſted againſt the whole article; upon which the Congreſs of Munſter likewiſe was diſſolved in the month of June 1649.

CHAP. X.

A. C. 1649.

During this period, a negociation was entered into between the officers of the Imperial and Swediſh armies at Prague, which was continued at Nurenberg; and the Imperial and Swediſh Envoys, and by degrees moſt of the Deputies of the States, ſoon afterwards, attended it. In June, 1649, an Aſſembly of Deputations from all the three Imperial Colleges met, and firſt, on the 11th of September 1649, drew up the contents of a PRELIMINARY RECESS. Immediately after the ſigning of this Receſs, certain territories and places were to be exchanged and reſtored to their legal proprietors, as the Upper for the Lower Palatinate, Prague for Augſburg, &c. After this, it was agreed that three of the five millions of dollars for the Swediſh army, ſhould be paid in three terms, each of fourteen days; and in theſe three terms a certain number of regiments diſbanded,

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disbanded, and certain places there mentioned, on both sides, evacuated; that the fourth payment of the millions should follow in six months afterwards, and the fifth in six months after that: that during the three terms, all the restitutions already liquidated should be made without delay; and that others, which could not be so expeditiously examined, on account of the variety or difficulty of evidence, should be put in execution within three months after the date of the Recess.

The Deputies appointed by the Empire began now to inquire into the cases of restitution, and grant commissions for their execution: a delay was made, however, till June 16, 1650, before the list of the restitutions, which were to be made in the three terms of fourteen days, and those which were to be made in three months, was formed. With this, the GRAND RECESS OF THE EXECUTION OF THE PEACE, as it was called, closed; which finally settled, that a million of dollars should be paid to the Swedes, by installments, in each term of fourteen days, so many regiments disbanded, and the restitutions made to the respective parties, mentioned in the list for the three terms. Of these, for the first term, the number amounted to thirty-nine; for the second, seventeen; for the third, nineteen; and sixty for the succeeding three months, without excluding others which might present themselves and prove their right. Happy was it for those who obtained their restitutions in the first three terms! the others have,

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in a great meaſure, been diſappointed to the preſent day. Among theſe were the Proteſtant inhabitants of Aix-la-Chapelle and Cologne, with reſpect to their private religious worſhip, although they were expreſsly mentioned in the liſt of the reſtitutions to be made in the three months.

Thus, therefore, the Peace which was concluded in October, 1648, did not acquire its proper firmneſs or conſiſtency, ſo that Germany could enjoy the fruits of it, till June, 1650. It was ſtill found neceſſary to forbid all diſputations, inflamatory ſermons, and other attempts to the prejudice of the Peace, or its execution, by an Imperial edict iſſued June 27, 1650. Nevertheleſs, on the 3d of January, 1651, Pope Innocent X. thundered out a bull, in which the whole Peace was declared both null and void, becauſe it had interfered in eccleſiaſtical affairs, without his concurrence.

Among ſome particular difficulties which attended the execution of the Peace, I muſt not neglect to mention thoſe which more immediately concerned the Elector Palatine. At the time that the eighth Electorate was created in his favour, there was no arch office for him, which was ſtill conſidered neceſſary for every temporal Elector. They were obliged, therefore, now to think of an office which was new, and ſuitable to his rank. The chief object of conſideration was a proper title, as well as a public function, at the coronation of an Emperor, or King

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BOOK VII.

of the Romans, and the bearing of ſomething before the Emperor in public proceſſions, which might at the ſame time occupy the middle ſhield in his Electoral arms. The office of Arch-treaſurer was fortunately thought of, in which all this was united; and there could be no objection made to the title. It was the office of the Arch-treaſurer, at the coronation, to throw coins among the people; and the crown ſtill remained among the Imperial ornaments which the Arch-treaſurer could carry, as well as the Arch-ſewer carried the Imperial apple, the Arch-marſhal the ſword, and the Arch-chamberlain the ſceptre. All this was ſettled by an opinion of the Empire, November 1, 1649. Charles Lewis, the Elector, ſubmitted at laſt, December 22, 1651, to accept it, and abandoned, though very reluctantly, his hopes of being made Arch-ſewer.

He met with a ſtill greater difficulty in taking poſſeſſion of his territories in the Lower Palatinate on the Rhine, which the Peace promiſed him the perfect reſtoration of. He ſucceeded indeed ſo far, that the Bavarians quitted Heidelberg, Manheim, and other places which they were in poſſeſſion of, on the 25th of September 1649; upon which, Charles Lewis himſelf returned, October 7, the ſame year, to Heidelberg. But there was ſtill a Spaniſh garriſon in Frankenthal, a Palatinate city between Manheim and Worms. As the King of Spain had taken no part in the Peace, he did not conſider himſelf under any obligation to remove the garriſon. The Elector, how-

however, had recourſe to the Emperor and Empire, to obtain the reſtoration of his territories throughout the whole Palatinate. In the receſs of the 16th of June 1650, the Imperial city of Heilbron was given up to him, in the mean time, by way of ſecurity. At laſt Beſançon, the capital of the county of Burgundy (Franche Comté), which had been hitherto an Imperial city, was reſigned by the Emperor and Empire to the King of Spain, who was then in poſſeſſion of the county, as a provincial city; and in conſequence of this, Frankenthal was evacuated by the Spaniards, April 22, 1652.

BOOK VIII.

Fifth Period of Modern Hiſtory.

EFFECTS OF THE PEACE OF WESTPHALIA, AND END OF THE REIGN OF FERDINAND III.

1648—1657.

CHAP. I.

Form of Government of the Germanic Empire in general, as it was firſt properly eſtabliſhed after the Peace of Weſtphalia.

Evident change in the conſtitution of the Empire—compoſed now of ſeveral diſtinct States, but united under one common head—Very different from France, where the Kings have always preſerved their domains, and have at laſt reunited every thing to the Crown—Neither Charles V, nor the Ferdinands, able to revoke what was once eſtabliſhed by the Treaty of Weſtphalia—Thus Germany became a body of States, which are to be conſidered otherwiſe when taken together than individually—In the latter point of view, they are as diſtinct as the other States of Europe—Hence ariſes the ſingular diſtinction of mediate and immediate members of the Germanic Empire, and of the relation in which they both ſtand to the Emperor, particularly with reſpect to his reſerved rights, or with reſpect to thoſe matters

taken

taken cognizance of at the Diet, the decrees of which firſt acquire the force of an obligatory law, when approved of by the Emperor. CHAP. I.

CONSIDERING the various revolutions which were occaſioned partly by the number of important articles of the peace, and partly by the calamities of ſo long and ſo general a war, it cannot be wondered that the whole conſtitution of the Germanic Empire, almoſt all at once, underwent a conſiderable change, or rather firſt acquired its proper firmneſs, which ſoon diſcovered itſelf by effects of the firſt importance.

As ſuch great revolutions in general do not ariſe ſuddenly without many preparatory circumſtances, which gradually unfold themſelves, being evident before hand, ſo Germany had been for ſeveral centuries in ſuch a ſituation, that it might eaſily be foreſeen, that it would not, like France and other European nations, continue an undivided Empire, which could not upon the whole be conſidered in any other light than as a ſingle State. From what I have already remarked (*a*) concerning the hereditary rights of the Dukes and Counts in their original ſtate, as ſervants of the Crown, and of the rights of ſovereignty which the ſpiritual and temporal States gradually acquired the poſſeſſion of, it could not for many years be ſaid, that the Emperor was the only regent in Germany, or that the whole of Germany could

(*a*) Vol. I. p. 184, 233, &c.

BOOK VIII. could in every respect be considered as a single State. Every spiritual and temporal Elector, or Prince, Count, or Prelate, had in fact been long the actual Sovereign of his country. Every Imperial city formed a distinct, though small, Republic. Even cities which were not Imperial, were almost in a similar situation. Every Imperial Knight, or immediate Nobleman, had dominion over the district of his estate, as his territory. Germany, therefore, had been long divided into as many separate States as there were Electorates, Principalities, Counties, Imperial Prelacies, Imperial Cities, Immediate Nobility, and Imperial Villages; and it could only so far be said, that Germany continued upon the whole one State, and one Empire, as all these particular States did not dissolve the bond which originally united them as members of the same Empire, but continued in a mutual and perpetual connexion, subject to the same fundamental laws, and to one common supreme head.

The remains of a similar constitution were evident even in France, as long as there were Dukes of Burgundy and Britany; and formerly the constitution of that country was almost the same as that of Germany; but the great difference which now appears between the internal constitution of the two nations of France and Germany, discovered itself in two principal things; first, that the King of France, notwithstanding the increase of the number of Dukes, Counts, and Prelates, always preserved his own domains, whilst the Emperor, on the contrary, lost them all; and then,

that

that in France, all the States, as at laſt Burgundy and Britany, were united to the Crown; whilſt in Germany, on the contrary, even the hopes of redeeming thoſe domains which had been only mortgaged, were at laſt totally abandoned. CHAP. I.

Every thing, I ſay, was already, and had been for ſo many years, in ſuch a ſituation in Germany, that it was eaſy to perceive that it would be difficult to make any further alteration; eſpecially as the attempt made by the powerful Emperor Charles V, which had the faireſt proſpects of ſucceſs, was totally fruſtrated by the valiant conduct of a ſingle German Prince, ſupported by France. The queſtions, however, likely to ariſe concerning the ſingular conſtitution formed in Germany, which was almoſt the only one of its kind, were not ſo thoroughly determined, that obſtacles could not be raiſed, and that a Ferdinand III, after the victories of Prague, Lutter on the mountain of Barenberg, and Nordlingen, might not ſtill feel a ſtrong inclination to imitate the example of Charles V, and make another attempt to reduce Germany, like France, to the dominion of a ſingle Sovereign. So far, the whole of the war of thirty years may be conſidered as a ſtruggle againſt this attempt; but it is likewiſe evident, that the Peace of Weſtphalia has finally decided the queſtion, in oppoſition to the deſigns of Ferdinand, in favour of the conſtitution, as it had actually exiſted for ſo many years, and for the advantage of the States of the Empire. Not that the Peace was the firſt foundation of their territorial ſove-

BOOK VIII. ſovereignty, and the prerogatives connected with it—No—this had been continually increaſing for ſeveral centuries, and in its nature was equally as valid before the commencement of the war of thirty years, as afterwards; but the treaty of Weſtphalia firſt confirmed it, and affixed the ſeal. All doubts which had before ariſen were finally removed, and the whole conſtitution ſolidly and permanently eſtabliſhed.

Germany therefore, conſidered as one Empire, is now a political, but not like the other European nations, a ſimple body, but a compound one, the component parts of which are diſtinct States, which ſtill preſerve their connexion under the Emperor, as one common ſupreme head. With this idea, every difficulty which had hitherto ariſen in the diſputes concerning the Germanic Empire, whether its government was monarchical, ariſtocratical, democratical, or mixed, totally vaniſhes. People were not aware that among different forms of governments there might be another higher diviſion of ſimple and compound States, which had no conformity with any other than the firſt of the different ſtandards. The examples of the Seven United Provinces, the Thirteen Cantons of Swiſſerland, and the Thirteen United States of North America, prove the poſſibility of ſeveral States being united in one compound political body, the component parts of which do not on that account ceaſe to be ſeparate States. The Germanic Empire has only this peculiarity, that, notwith-

notwithstanding its dismemberment into so many separate States, it has preserved its ancient monarchical head; and all this may be perfectly reconciled upon the same principle as we consider all compound bodies, when we view them in the whole, in a different light from that in which we view them in their separate parts.

Germany, as a compound political body, consists of as many different States as there are States of the Empire, and territories, each of which has its own peculiar government, which are again distinguished into almost every possible species, and are, more or less, monarchical, aristocratical, or democratical. In the whole, however, Germany, considered as an Empire, has its monarchical form of government, so long as the person of the Emperor is independent of all superior human power: for the essential difference between a monarchy and republic consists in this, that in the latter no single individual can be independent, as crowned heads only in the former. Germany, therefore, considered in the whole, in reckoning the States of Europe, can no more be left out of the number of empires and monarchies, than Great Britain, Sweden, or Poland; but this is no reason why the Emperor should have an absolute monarchical power, like the Kings of Denmark, France, and others; but he remains a Monarch, though he cannot act without the consent of the Diet, any more than a King of Great Britain without the concurrence of the Parliament; and though his throne is not hereditary,

like

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like that of other kings, but depends upon a free election like that of Poland.

If we consider this compound political body again in another point of view, which is inseparable from it, viz. its component parts, it has evidently much more resemblance to the States of the United Provinces, Swisserland, and North America, than to countries which are simple monarchies. This distinguishing characteristic certainly always remains, that we are united, not merely under a congress, or states-general, but under a common supreme head, endowed with monarchical though not absolute power, and in most respects under the necessity of acting with the concurrence of the States of the Empire. This, however, does not by any means prevent the other third point, as often as the component parts come into consideration, in which the constitution of the United Provinces mentioned above, may be compared with that of the Germanic Empire, as far as this Empire is divided into separate States totally distinct from each other.

Every Electorate, every Principality, every Imperial city, every territory, however inconsiderable, which is included in the number of the States of Germany, has its own peculiar government, its own fundamental laws, its own taxation, administration of justice, police, coinage, and what is still more, its own military establishment, and the right of entering into alliances, making war, concluding peace, and

and ſending ambaſſadors: in ſhort, whatever ideas a perſon travelling through the various independent States of Europe may form of the difference of their conſtitutions, laws, and other regulations, will equally occur to a traveller in Germany; and often teach him, in a ſtill more ſtriking manner, that there are States which are totally diſtinct from each other; ſince he need not travel half a day, without finding forms of government ſometimes republican, ſometimes monarchical, ſometimes limited, ſometimes deſpotic, ſometimes hereditary, and ſometimes dependent on the freedom of election, and without finding totally different laws in every new territory, other coins, other poſts, and other ſoldiers *; and a perſon who reſides but for a ſhort time in the country, would much more frequently experience that Germany conſiſts of ſeveral States totally diſtinct from each other, than that the Empire is ſtill united under one common ſupreme head.

One circumſtance ariſing from this, and peculiar to the Germanic Empire, is the diſtinction between its mediate and immediate members. In the ſame manner as two objects which we may ſuppoſe to have relation to each other, are immediately related, when there is no third object intervening, but otherwiſe only

* This circumſtance is very inconvenient to ſtrangers: the difference of the States is not only obſervable by the uniform of the troops, colour of the livery of the poſtilions; but by a change of money, which frequently differs in its value, and generally by the payment of freſh tolls.

BOOK VII.

only mediate. This may-be illustrated by the example of the connexion between a grandfather and his children, who may be said to be mediately related; while the relation between parents and children, on the contrary, is immediate; and in this relation, all persons and affairs in Germany stand, under the sovereignty of the Empire, and its common head. But as a nobleman's estate, for instance, which lies in a German Principality, and subject to a Prince's sovereignty, is only so far a part of the Germanic Empire, as it constitutes a part of that Principality; so, with respect to the whole Empire, it can only be considered as a mediate member. Such estates, or territories, on the contrary, are immediate, which do not form any part of another State, but only constitute a part of the Empire in general.

According to this idea, the whole of Germany is divided into mediate and immediate members; the latter of which are regularly at the same time States of the Empire, who have the government of their respective countries in their own hands; and the former are, as parts of these States, subject to their territorial sovereignty; yet there are immediate mem-members of the Empire likewise, which have no seat or voice at the Diet, and are therefore not States, the very nature of which essentially consists in such a seat and voice. These are the free Imperial Nobility, or Knighthood of the Empire, and the Imperial villages. Many Noblemen's estates, convents, and cities likewise, have lost their immediacy, and are become subject

ject to the ſovereignty of other States, and are therefore mediate; and the queſtion is ſtill diſputed with ſome, whether they are immediate or not.

The whole conſtitution of the Germanic Empire, therefore, centers in this, that the queſtion ſtill remains reſpecting the ſovereign rights of the Emperor over mediate members, either in the caſe of complaints made againſt their ordinary government, or by virtue of certain reſerved rights which exiſted before the riſe of territorial ſovereignty, and have remained throughout Germany in the Emperor's power. Theſe are, in particular, his right of raiſing to a higher rank, conferring academical honours, and nominating Counts Palatine of his Court, and Notaries. Yet even theſe rights cannot be exerciſed with any legal effect, or acknowledged in moſt countries, without their being firſt ſubmitted to the examination and approbation of the territorial Lord.

No ſovereignty whatever can be exerciſed over immediate members of the Empire, except in the name of the Emperor; but with this diſtinction again, whether it is left to the Emperor alone, as in the caſe of moſt Imperial grants, inveſtitures, and the juriſdiction as exerciſed in the Imperial courts of judicature, with reſervation of the reſort to the Auſtregues; or whether it depends upon the conſent of the Diet, the two ſuperior Colleges of the Empire, or of the Electoral College alone. This matter has been determined at different times, partly in the Peace of

Weſtphalia,

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Weſtphalia, and partly in the Emperor's capitulations; though with reſpect to the latter, all the diſputes which have ariſen concerning the caſes where the Electoral conſent alone is neceſſary, have not yet been wholly decided.

Even in the Peace of Weſtphalia, ſome doubts are ſtill remaining concerning what caſes, beſides thoſe which are expreſsly mentioned as belonging to the Diet, are included in the clauſe annexed, which mentions "other ſimilar caſes." Even in thoſe matters which belong to the Diet, particularly when any thing is in queſtion which is to have the force of law throughout the Empire, and the weight of which is likely to fall upon the States themſelves, the balance ſeems more in favour of the States than of the Emperor. On this account it almoſt as frequently happens, that a motion is made on the ſide of the States, which they endeavour to bring to a concluſion of the Empire under the Emperor's authority, as that the Emperor himſelf propoſes any thing which requires the conſent of the Empire. In this reſpect we find that the relation between the Emperor and the Diet is totally different from that in which the King of Great Britain ſtands to the Parliament, or the Kings of Sweden and Poland to their Diets. There thoſe who have a ſeat and voice at the Diet are only private perſons; whilſt here the States are actual Sovereigns of a country. Even the Congreſs of North America conſiſts only of deputies from the United States, each of whom is dependent on the State which

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ſends him, and bound to comply with its inſtructions: CHAP. I.
the States of Germany, on the contrary, are actual rulers of thoſe countries, from the poſſeſſion of which they derive their ſeat and voice at the Diet. The votes themſelves are given as they pleaſe; or when they depute others for that purpoſe, as their plenipotentiaries, it remains always in their power to direct how they ſhall be given.

Beſide the opinions or reſolutions which the States may form among themſelves, it is certainly neceſſary for the Emperor to give his approbation before a decree of the Empire can have its legal force, or the rights of majeſty be exerciſed throughout Germany. Yet there are caſes where a joint reſolution of all the States of the Empire together, or of a certain number of them, may have its due efficacy without the Emperor's conſent: as in this manner ſeveral of the States have united, and entered into a ſort of treaty with each other, more than once, reſpecting the ſtandard of coinage, which they have ſettled themſelves.

CHAPTER II.

Constitution of the particular States, as it was first firmly established by the Peace of Westphalia, and principally the Constitution of those Countries which have Provincial States.

No despotism legally allowed in the particular States of Germany, either on the part of the Emperor, or the ordinary government, though each State has its own autonomy or power of legislation, but with recourse to higher Judges—The power of most of the territorial Lords, restrained moreover by Provincial States, except that some countries, which were originally composed from several villages, have no States—In some, likewise, one sort of States are wanting, and in others, another; for instance, Prelates or Nobility—Frequently merely Deputation Diets are held, or even all meetings of the States entirely out of use.

BY the constitution of the Germanic Empire, as it was first firmly established by the Peace of Westphalia, not only the Empire in general, but every individual member of it, is secured from the apprehension of the exercise of any despotic power on the part of the Emperor; and provision is equally made for the security and welfare of all and each of the States, according to the principles of the constitution, if it is preserved in the same state as it was then established by law.

Each

CHAP. II.

Each of theſe particular States, whether ſmall, great, or of a moderate ſize, is perfectly at liberty to form its own regulations, provided they are not in oppoſition to the laws of the Empire, which indeed contain very few reſtrictions of this nature, and are not prejudicial to the ſtipulated or other prerogatives of the members of the Germanic body. Not only Princes and Counts, but all members of the immediate Nobility, enjoy, in their family affairs, an unlimited right of acting for themſelves*; that is, the liberty of making what regulations they pleaſe, and living according to the laws made by themſelves. This unlimited right extends to the internal regulations of every country, every Imperial city, and immediate territory, as far as thoſe who have the government in their hands are agreed among themſelves: though, when one or another is of opinion that he is injured, he may refer his cauſe, in the courſe of law, to the deciſion of the Imperial tribunals, or, if he pleaſes, to the general Diet.

Thus, not only every province, and every Imperial city, but every individual inhabitant, is certain of the power of the territorial Sovereign or government not being abuſed to his prejudice; quite otherwiſe than in independent States, whether monarchically, ariſtocratically, or democratically governed, where there is no recourſe open in any caſe to a ſuperior Judge, againſt abuſes of the ſupreme power.

* Eine unbeschrankte autonomie.

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In moſt countries, moreover, the territorial government is limited by Provincial States, which at the ſame time ſerve as a protection againſt deſpotiſm. According to the original conſtitution of Germany, which was more obſervable at the time of the Peace of Weſtphalia than at preſent, ſome ſimilitude might be perceived between the conſtitution of the Empire in general and that of the particular countries; among other things, in this reſpect, that moſt of the Princes ſtood in nearly the ſame relation to their Provincial, as the Emperor to the general Diets. In moſt countries the Prelates, the proprietors of free-noble eſtates, and the original cities, had a ſeat and voice at the Provincial Diets. The only difference to be obſerved was, that the whole country was not divided among the Provincial States, as the whole of Germany is among the States of the Empire; but a great part of the country conſtituted the domain of the Sovereign. The conſent, therefore, of the Provincial States was neceſſary, when the Sovereign was diſpoſed to conſtitute a law, levy a tax, or exerciſe any other right of ſovereignty, which was to extend its efficacy to their eſtates and territories: but when it was even carried ſo far, that the affairs of the country in general were diſcuſſed at the Provincial Diets, and that the Provincial States therefore might in ſome meaſure conſider themſelves as the repreſentatives of the whole country, yet the ſimilarity which the conſtitution of the Empire has to Congreſſes of united States, is very different from

from the conſtitution of thoſe countries of Germany which have Provincial States. CHAP. II.

In fact, however, there were only Provincial States in thoſe countries where there were convents, noblemen's eſtates, and cities, previouſly to the riſe of the territorial ſovereignty. Many Counts and Lords of countries, whoſe lands or little property conſiſted only of their own family manſion and a number of adjacent villages, who had therefore villains, and no free ſubjects to govern, have never had any Provincial States, though the place of their reſidence itſelf, or ſome of their villages, became cities. Even countries which are now extenſive may have been formed from an aſſemblage of ſuch counties or lordſhips, without having any Provincial States, of which we have a ſufficient inſtance in the Palatinate on the Rhine.

The circumſtances likewiſe of the Nobility claiming the right of immediacy, convents having raiſed themſelves to Imperial Prelacies, and cities becoming free, may often have prevented this ſort of conſtitution; or elſe one or other claſs of the States may be wanting, as in the country of Wurtenberg, where the States conſiſt only of the Prelates and cities, becauſe the Nobility of that country are only vaſſals, and not ſubjects (*a*). In other Proteſtant countries, the claſs of Prelates is ſometimes wanting, where the religious foundations have been ſecularized, or elſe ſome of them become the property of the Nobility,

 and

(*a*) Keine landsäszige Ritterschaft.

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and the quality of Provincial States enjoyed by the former incorporated in that of the latter.

In many countries, where it was very common to hold Provincial Diets, at the time of the Peace of Westphalia, this form of government has since almost totally decayed, or else, instead of a general Provincial Diet, a meeting has come into use, of a greater or less Committee of the States, or, as it is called, an Assembly of Deputations. Many considerable countries, however, continue occasionally to hold Provincial Diets still. A case, indeed, may certainly be possible, where the obstinate refusal of the consent of the States may sometimes prevent the execution of a plan designed for the public good: but whether the case is not much more frequently to be apprehended, that where there are no Provincial States, arbitrary imposts, and the despotic inclinations of a Sovereign or his Minister, may not tend to the ruin of a country, is another question. Examples, indeed, are not wanting of an evil-disposed Minister having laid the foundation of the greatest injury to his country, where these Provincial Diets are still in use: but would not this injury perhaps have been still greater, if there had been no Provincial States at all? Or, when the credit of a country is in question, or of two countries, where there are States, and where there are none, if the choice was left to a person, in which he would wish to settle—would it be a difficult matter to determine which of the two would have the preference?

CHAPTER

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CHAPTER III.

Particular Qualities of the Ecclesiastical Countries.

The members of the Chapters of the ecclesiastical territories constitute the first Provincial States, or supply the place of the States entirely—They make particular capitulations with the Spiritual Princes—When no coadjutor is previously elected, they take the government upon themselves during a vacancy of the see—In other respects, likewise, their prerogatives have great influence on the constitutions of ecclesiastical countries—Though the Canons are not actually the proprietors or co-proprietors of the country, yet they generally occupy the first offices—It makes some difference, indeed, whether the person elected has been a Prince, or only a Nobleman, before—Advantages accruing to noble families, whose relations become Bishops, or only Canons—Many religious foundations have been in the hands of princely families for a considerable length of time—otherwise, changes frequently take place in the mode of government, and, on that account, less uniformity of principles—Besides which, the ecclesiastical territories are oppressed by heavy demands from Rome; all which makes an evident difference between the welfare of ecclesiastical and secular countries.

THE ecclesiastical countries of Germany have this pecularity, that they have their Chapters; that is, a certain number of Noblemen of suitable rank, who are vested with the power of electing the head of their church (who is at the same time Sovereign of the lands belonging to it), or may be elected themselves. This Chapter constitutes at the same time,

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in moſt of the eccleſiaſtical countries, the firſt Provincial State; or, where there are no other Provincial States, the Members of the Chapter in ſome meaſure ſupply their place, at leaſt in this reſpect, that in important affairs, which concern either the State or Church, no meaſure can be adopted, which has the force of law, without their conſent.

As theſe countries are elective Principalities, they have another particular reſemblance to the conſtitution of the Empire; for, as every Emperor or King of the Romans muſt ſwear to a capitulation at his election, moſt of the Spiritual Princes, likewiſe, muſt ſwear to a capitulation propoſed to them by the Chapter (*a*). According to the preſcriptions of the Canon Law, and upon the principle that all eccleſiaſtical offices are legally conferred, without any other conſideration than the worthineſs of the perſon, and can never be obtained through money or intereſt, it naturally follows, that the Members of an elective Chapter dare not promiſe themſelves any advantage in the choice of a Spiritual Prince, without incurring the charge of ſimony; and ſeveral Princes have, for this reaſon, been abſolved from their obligation to comply with ſuch capitulations, by the Pope and the Emperor, and the capitulation itſelf declared to be null and void. As far, however, as a capitulation, at the election of an Archbiſhop or Biſhop, contains only ſuch promiſes as tend to the advantage of the Electors, and is confined

(*a*) Vol. I. p. 178.

fined to such things as are consistent with the constitution of the countries of Germany, and the Catholic Church, there can be no objection to it. With respect to the Bishoprick of Osnabruck, an article in the Peace of Westphalia ordered, that there should be a perpetual capitulation agreed upon between that Chapter and the House of Brunswick, which afterwards took place—so little can the impossibility of rejecting all episcopal capitulations proposed at elections be doubted.

This particular resemblance to the constitution of the Empire, may be further observed in the circumstance—that if a successor is not previously elected, as a King of the Romans for Germany, or a Coadjutor for the ecclesiastical territories, an interregnum takes place, or, as it is called, a vacancy of see; and during that period, the government is entrusted to the Chapter, in the same manner as the administration of the Empire to the Vicars. Such a Regent-Chapter, as it is in that case denominated, as long as the see continues vacant, has the whole government in its hands, and the exercise of all the sovereign prerogatives, even including the right of voting at the Assembly of the Imperial States, except that it is a disputed point whether Chapters of the Spiritual Electors can take any part in the election of an Emperor and King of the Romans, and whether the Chapter of Mentz can execute the Elector's office, in the direction of the General Diet and Electoral College.

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Such capitular governments (that no form of government, among all which have hitherto been invented may be wanting in Germany) afford a perfect example of an ariſtocracy. Apprehenſions have on ſome occaſions naturally ariſen, leſt the ſame defects and temptations to which ariſtocracies are chiefly expoſed, ſhould creep in among them, and endanger their welfare, as in the caſe of the Canons dividing the revenues of the land among themſelves, during their regency, &c. Upon the whole, however, it is impoſſible, from the circumſtance of Canons being ſometimes ſovereigns themſelves, and having not only the excluſive right of electing their reigning Prince, but likewiſe of being themſelves elected, to prevent them from having a remarkable influence upon the whole conſtitution of ſuch eccleſiaſtical countries.

Though it is not directly granted, which ſome maintain, that the Chapter, even during the life of the reigning Prince, are actual Lords of the country, and in ſome reſpect have a joint property therein (*a*); yet ſuch a relation conſtantly ſubſiſts between the Spiritual Princes and the Chapter, that the Canons cannot totally be ſet aſide. In moſt of the eccleſiaſtical countries, except indeed where the Court and Chapter are not in the ſame place, as at

(*a*) DAVID-GE. STRUBE on the Hereditary Rights and Dominion of the Germanic Chapters, in his Book entitled NEBENSTUNDEN, or Leiſure Hours. 1742. Vol. I. p. 1—181.

at Bonn*, the offices of Preſidents of the Government, the Exchequer, or Chamber of Revenues, Privy Council, and the other collegiate bodies of the country, are generally occupied by Canons. They are generally appointed likewiſe to the chief offices of juriſdiction† in the country, the lieutenancy or government‡ of particular diſtricts, embaſſies, and all offices of the like nature; or, where it is not practicable

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* The reſidence of the Elector of Cologne, in which city the Chapter is held. The inhabitants of the latter city flatter themſelves not a little with an idea of independence, in which they have met with great ſupport from Holland, on account of their trade. The Elector is bound, by treaty, not to ſtay more than three days in the place.

† Oberamptern.

‡ Statthalterschaften. This is generally the caſe where ſuch eccleſiaſtical government is in poſſeſſion of any diſtant territory, as the country of Eichsfield, of which Baron Dalberg, the preſent Coadjutor, or Archbiſhop elect of Mentz, is governor. I mention this Nobleman in particular, becauſe he is celebrated throughout Germany for the great qualities of his head and heart. Though likely, in a ſhort time, to be one of the firſt among the reigning Princes in the country, and flattered by every proſpect of opulence and grandeur, he has not diſdained to walk the paths of literature, and cultivate the ſtudy of philoſophy. Baron Dalberg is a member of ſeveral learned ſocieties, and is himſelf diſtinguiſhed as an author. A treatiſe he has lately publiſhed, entitled "The Affinity between Morality and Politics," is a ſufficient evidence of the ſoundneſs of his judgment, and the purity of his mind. The work was tranſlated in 1787, by Count de Görtz, one of the Miniſters of Pruſſia. The Germanic Empire may indeed glory in the expectation of ſo enlightened an Elector, and the inhabitants of Mentz rejoice in the proſpect of having ſuch an amiable Prince.

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ticable to hold ſuch offices, ſtill, from the connexion in which the eligible Nobility alone of ſuch countries generally ſtand with the Canons, or with the reigning Prince himſelf, it naturally follows that, beſides the Chapter, the other Nobility have the greateſt claim to all theſe advantages. The advantages which the German Nobility enjoy at moſt of the Courts, appear particularly ſtriking to foreigners who have any knowledge of the country: and they are no where ſo remarkable as in the eccleſiaſtical territories.

When a Prince of a great houſe acquires the poſſeſſion of an eccleſiaſtical country, there may be ſome moderation; but if, as is generally the caſe, the Prince is of a noble family*, it can hardly be expected to be otherwiſe than that thoſe families which have the good fortune to be allied to him, as his brothers, relations by marriage, or even couſins, will endeavour to profit from his favour as much as poſſible, and make others perhaps ſenſibly feel the advantages of their connexion with the throne.

When

* The advantages ariſing to the Nobility in Germany, have been already mentioned in a note to Vol. I. p. 177; and I embrace this opportunity of correcting an error into which I was led, by ſuppoſing that a ſimilar privilege exiſted in All Souls College, Oxford, implied by the words *bene nati* in the ſtatutes. A gentleman of that reſpectable Society has favoured me with a ſight of the ſtatutes, in which I find no ſuch expreſſion occurs.

When we conſider the ſpiritual foundations of Germany, therefore, as they ſerve for the proviſion of ſuch ſons of the Nobility as are not intended to keep up their families by matrimony, or otherwiſe advance them, we ſhall find that in moſt of the eccleſiaſtical countries their object is fully accompliſhed. A family which after many generations has once the good fortune to ſee an eccleſiaſtic of their houſe raiſed to the dignity of a Prince, is very often relieved at once from the incumbrance of debts which have been accumulating perhaps for more than a century, or elſe raiſed to ſuch eaſy circumſtances, that they may promiſe themſelves a flouriſhing ſtate for centuries to come: and if they do not even ſucceed to the mitre, yet Canons in many foundations may poſſeſs at the ſame time ſuch profitable benefices, that, if they are only moderate economiſts, and are on friendly terms with their relations, they may always leave them conſiderable legacies, and procure them other advantages.

Among the Princes of great houſes, there are frequent examples of their obtaining the poſſeſſion of one or more eccleſiaſtical Principalities, when they are very young, and of their reigns laſting for a great length of time, or elſe of the mitre paſſing from one Prince to another of the ſame houſe; as in the caſe of the Archbiſhoprick of Cologne, which was in the poſſeſſion of the Princes of Bavaria alone, from the year 1583 till 1760, who were at the ſame time,

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for the moſt part, in poſſeſſion of other Biſhopricks; otherwiſe, the eccleſiaſtical Princes are generally of a certain age before they are elected, and of courſe there are but few inſtances of long reigns.

This very frequent ſucceſſion to the government, eſpecially when an interregnum or government of the Chapter intervenes, is attended with inconveniences; partly, as every one endeavours to reap the fruits of his elevated ſituation as much as poſſible for himſelf and family during his life-time, and partly becauſe uniformity of principle is much leſs likely to be preſerved from one government to another, than in countries which are hereditary. It muſt often happen likewiſe, that as the ſucceſſion changes, not only different favourites and miniſters ſucceed, but even different ſyſtems of government, other projects and regulations, and even plans of quite an oppoſite nature. This circumſtance is imagined by many to be the cauſe why inſtitutions of every kind, which might be of general utility, ſuch as would tend, for inſtance, to the promotion of trade and commerce, or the encouragement of the arts and ſciences, or whatever elſe might improve a country, ſeldom proſper ſo much in eccleſiaſtical as in ſecular territories.

Another circumſtance is very oppreſſive to the eccleſiaſtical States, and will ever oppreſs them as long as they continue in the connexion in which the Roman Hierarchy has hitherto held them

—The

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—The Prince Bishop whom Charlemagne expressly made only the first in rank among the Archbishops and Bishops of his Empire, on both sides of the Alps, and who was in other respects their equal, but since that period has had the good fortune to be honoured as the visible head of the whole Christian Church, had indeed, like the Archbishops and Princely Bishops of Germany, his territory and subjects, who supplied him with ample revenues for his support. On account of the trouble which arose from the numerous churches and countries subject to his supreme hierarchical power, and the expences occasioned by the *Curialists*, as they were called, who were employed in such business, and the transaction of affairs which related to the church, he thought it was but just that those who were formerly his colleagues, but now his subjects, as he considered the Archbishops and Bishops of Germany, should contribute a suitable sum of money to lessen his expences. These contributions were by degrees brought successfully into practice, under the name of Annates, Pallium-money (*servitium*), and other pecuniary aids (*a*); and notwithstanding the labours of the Councils of Constance and Basil, supported by the Concordate of Aschaffenburg (*b*), the attempts to abolish them were rendered fruitless, and they still continued in force (*c*).

Even

(*a*) Vol. I. p. 317. (*b*) Vol. I. p. 328, 338.

(*c*) The Annates were properly only raised from small benefices and prelacies, which are not consistorial and belong only to the

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Even the Church of France, which in other respects claims such distinguished privileges, was not able

the treasure of the Pope, without any part being divided among the Cardinals. The sums paid by the Archbishopricks and Bishopricks, and consistorial Prelacies, is half of it the Pope's private revenue, and the other half the property of the College of Cardinals; on which account it is denominated *Commune servitium.* (Since the year 1396, the sum paid for Salzburg has amounted to 10,000 gold guldens*.) Besides, a variety of fees are paid to the Pope's servants, and those of the College of Cardinals, under the name of *Minuta servitia.* Those who have a share of this, are, 1, *Auditor Cardinalis Protectoris*; 2, *Secretarius Congregationis consistorialis in quâ validitas electionis discutitur*; 3, *Relator Cardinalis*; 4, *Vice-Cancellarius*; 5, *Secretarius Protectoris*; 6, *Scriptores Apostolici*; 7, *Abbreviatores*; 8, *Capellani*; 9, *Cubicularii*; 10, *Centenarius*; 11, *Camerarii*; 12, *Parefrenarii Papæ*; 13, *Mazerii, et alii participantes*; 14, *Præfectus sollicitatorum*; 15, *Protonotarii Apostolici*; 16, *pro Mantillettis Clericorum Cameræ*; 17, *Custos Cancellariæ*; 18, *Corrector Cancellariæ*; 19, *Ostearius Cancellariæ*; 20, *Clerici Cameræ*; 21, *pro Plumbo*; 22, *pro Sollicitatione.*"—Account of Juvavia, p. 162—166; at the end of which, is the following observation: " A whole legion of " Romans, whose very existence depends upon the contribu- " tions of other parts of Christendom; consequently, therefore, " if these were withdrawn, the whole Chamber of the Pope must " come to nothing." In the 16th and 17th centuries, the tax for Salzburg, *pro commune et minutis servitiis,* amounted all together to between 25 and 26 thousand scudi†. Besides all this, what a number of instruments are drawn up at Rome, at the election of every new Archbishop! viz. 1, a previous Papal *placet*; 2, the Bull of confirmation; 3, a Bull to the suffragan Bishops; 4, another to the Chapter; 5, one to the other Clergy; 6, one to

* A gold gulden or florin is reckoned in Germany at two dollars six groschen, about 7*s.* English.

† A piece of money in Italy, value 4*s.* 2*d.* to 4*s.* 6*d.*

able to get rid of the annates by the Concordat, in which Francis I. made the condition for himself and successors, that they should always enjoy the great prerogative of nominating all the Archbishops and Bishops of France. The annates of that country are said annually to amount to near 3,600,000 livres. The Archbishops and Bishops of Germany, therefore, remain subject to these demands as custom has once established them, except those Bishopricks which are come into the hands of Protestants, and which of course have at once totally destroyed the bonds which formerly connected them with Rome.

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At the negociations relating to the execution of the Peace, which were held at Nurenburg, the Envoy from the Elector of Mentz, as appears by a protocol taken in the presence of the Imperial Envoy Volmar, July 12, 1650, said, in the course of conversation, "The Pope demands 30,000 ducats from "the Coadjutor of Treves, for his pallium: he "plagues the Elector of Mentz in the same man-"ner.—Very fine devotion, truly! Both Arch-"bishopricks

to the Vassals; 7, several more to the people of the City and Diocess; 8, the Bull of consecration; 9, the Commission to assume the Pallium; 10, the formulars to be used on the occasion; 11, the oath prescribed to the new Archbishop; and 12, a prodigious number of so denominated *faculties*, by which the Archbishop is invested with particular powers, such as to grant absolutions, dispensations, &c.; which certainly are already included, by right, in the Archiepiscopal power itself.—Account of Juvavia, p. 157—161.

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" bishopricks are ruined; and yet such a sum of mo-" ney as this is to be sent to Rome, to be spent there. " —There are Archbishops in Italy who do not give " above 100 crowns." Volmar laughed, and said, " That they should write to the Pope, and tell him, " that if he would not remit the tax for the pallium, " they would turn Lutherans." Upon which the other said, that " It might be taken ill, or else it " would certainly be the best method (*a*)."

Such sums of money, which are so often sent to Rome, and totally lost to the State, must certainly be a great burthen upon the ecclesiastical countries; so that we may easily conceive, notwithstanding the soil in most of these countries is the best, and the government the mildest, (so much so that it is even become a proverb—" Good living under the " Crook," alluding to the episcopal crosier) why most of the ecclesiastical countries are not in such a flourishing

(*a*) Meier's negociations for the execution of the Peace at Nurenberg, Vol. II. p. 462. Even in the present 18th century, James Ernest, Archbishop of Salzburg, though he only paid 995 scudi for his pallium, was obliged to pay 31,338 for the Pope's confirmation of his election; all together, therefore, 32,333 scudi. Andrew James von Dietrichstein, the Archbishop who succeeded him, requested that the sum might be moderated, and paid therefore only 20,000 scudi in all. Benedict XIV, however, took this very ill; and said, in March, 1748, to Crivelli, the Salzburg agent, " Indegno artificio che avete concertato, per rendermi odioso ai " Cardinali e à tutta Roma. Questo è lo studio consueto della " nazione] Tedesca di voler vedere vilipeso il Papa e la santa " sede."—Account of Juvavia, p. 164.

flourishing state as others (*a*). The difference might be placed in a very striking point of view, if it were possible to procure an accurate description of the countries secularized by the Peace of Westphalia, as they are at present, and as they were in former times, and compare them with each other.

(*a*) Many interesting reflections upon this subject, may be found in a writing of a Catholic Author, under the title of CHRIST. FRED. MENSCHENFREUND'S Examination of the Question, Why the Protestant countries are in so much more flourishing a condition than the Catholic ones?—Salzburg and Freisingen, 1772.

CHAPTER IV.

Peculiarities of the Germanic Conſtitution, particularly as they became conſpicuous after the Thirty-Years War, and the Peace of Weſtphalia.

Advantage of the Germanic conſtitution, that the territorial Sovereigns have in fact only the power of doing good, and not evil—Though the idea of being actual Lord of a country, and an unhappy ſpirit of rivalſhip, are often attended with bad conſequences—A very different mode of life among the Princes before the war of thirty years—The expence of living begins now evidently to increaſe—Diſputes ariſe at the Congreſs of the Peace of Weſtphalia, concerning the rank and title of Excellency, among the Republican and Electoral Envoys, which occaſions a ſpirit of rivalſhip among the Princes and other States.—Some Houſes conſiderably advanced by the Peace itſelf, and ſubmit more frequently to the introduction of the right of primogeniture, and the cuſtom of providing for the younger ſons, not with dominions, but annual penſions.

IF we conſider the peculiarities of the Germanic conſtitution, as it was now firmly eſtabliſhed by the Peace of Weſtphalia, we ſhall find that one of its greateſt advantages is, that when every thing is in its proper order, each individual territorial Lord has ſufficient opportunities of doing good; but that if, on the contrary, he is inclined to injure his country, either the Provincial States may interfere to prevent him, or elſe his ſubjects in general, or any individual among

among them, may ſeek redreſs from one of the ſupreme tribunals of the Empire. Upon the whole, therefore, it is certainly a happy conſtitution, by which ſuch proviſion is made to prevent the apprehenſion of ill conſequences attending the territorial ſovereignty, divided as it is in ſo many hands, which of courſe cannot be ſuppoſed to be guided always with the ſame degree of wiſdom and goodneſs of heart, as might otherwiſe be expected, conſidering that the little tyrants of a confined diſtrict are often more dangerous than great tyrants in extenſive territories.

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There are two rocks however ſtill remaining, peculiar to the Germanic conſtitution, which our reigning Princes, and thoſe who are in expectation of power, cannot be ſufficiently cautioned to avoid. The German word LANDESHERR (territorial Lord) ſeems once to have conveyed an idea that they were actual Lords of their country, in the ſame manner as the proprietor of an eſtate conſiders it as his own property, to be diſpoſed of and managed as he pleaſes. The anceſtors of the preſent States of the Empire might certainly be originally conſidered only as the poſſeſſors of large eſtates, though they have ſince gradually acquired the character of actual Sovereigns. As they are therefore now in that capacity, they muſt not any longer imagine that their territories are merely for their own uſe, that a number of ſlaves wait for their commands, and that only rights, and no obligations, are connected with their elevated rank; but they ought to recollect, that, as rulers, they have real duties

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to discharge, which ought only to tend to render their country happy, and to promote the security and welfare of their subjects.

Another circumstance which has frequently proved unfortunate to whole families and countries, particularly since the Peace of Westphalia, and which seems equally peculiar to the Germanic constitution, is that unlimited spirit of emulation which prevails among the greatest part of the States of the Empire, who are so distinguished from each other, not only in power, and extent of territory, but according to their different degrees of rank, as Electors, or Princes, spiritual or secular, old titles or new ones, whether Princes, Counts, or Prelates; and yet they never yield to each other; but as an Elector imitates the example, and vies in expence with a King, so the Prince vies with an Elector, the Count with a Prince, &c.

A comparison of the times previous and subsequent to the Peace of Westphalia, may afford us instructive information, how much not only the style of living, but the manners and way of thinking at our German Courts, are changed. A steward in the service of one of our Dukes wrote once in his diary, "To-day our "Duke went with all his young Nobles to a tavern, "and feasted there the whole day long, for which I "had to pay eight dollars (DAT HET SCHLAMPAMPEN)—There's living for you (*a*)!" Another Duke sent

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ſent his ſon to travel, and wrote a letter by him to an Elector: "Now that our ſon is grown up, and "rather an awkward lad, we have thought it neceſ-"ſary to ſend him abroad, and particularly to your "Highneſs's Court, that he may learn good manners; "we have provided him likewiſe with a ſervant "to travel with him (*b*)." The Landgrave Philip, of Heſſe Rheinfels, who was born in the year 1541, and died in 1583, at a time when he expected ſome Princes of the Palatine Houſe to viſit him, heard that a private man had got ſome fine large turkeys. That he might treat the Counts Palatine handſomely, he ordered the man to bring him one or two of them for a proper price, which the ſteward of his houſehold ſhould pay immediately. The ſame Prince likewiſe wrote to one of his bailiffs, and ordered him to purchaſe two hundred ſheep, which he wanted to put into his incloſures at Rheinfels (*c*).

This Landgrave Philip likewiſe ſent his brother William IV, Landgrave of Heſſe Caſſel, on the 14th of March, 1575, a long letter, with a lively deſcription of the decline among the Princes, which he ſaid he dreaded would be the conſequence of the great increaſe of expences, which were even then complained of. Among other things, ſays he, "Your father,

 "Philip

(*a*) Keissler's Travels, Vol. I. p. 113. 2d Edit. p. 84.

(*b*) Ibid.

(*c*) Schloetzer's Correſpondence, Vol. VII. p. 198.

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" Philip the Magnanimous, notwithſtanding he was " in poſſeſſion of the whole country, which is now " divided in four parts, and had the management of " all the concerns of the Schmalkaldic League, had " only one chancellor, a doctor, and a ſecretary. " The firſt of theſe ſerved him twenty years for eighty " florins, the ſecond for fifty, and the third without " any ſalary at all. Now every one of you have " more doctors, ſecretaries, and clerks, for your- " ſelves, and at very high ſalaries: beſides this, each " of you has ſuch a number of huntſmen, cooks, " and other ſervants, that there is a huntſman for " every hill, a cook for every pot, and a butler " to every caſk. Then comes your itch for play, " gadding about to dances, and viſiting foreign " Princes, which (ſays he) is the only way to drain " your purſes." He complains too of the Italian luxury in dreſs, which was the faſhion then, ſuch as wearing velvet and ſilk, and decorating the horſes with feathers and velvet cloths — " juſt as if we " were Italian civet cats, which does not ſuit this " country at all. Italian and German luxuries don't " agree. The Italians are ſtately in their dreſs, " but they eat the worſe for it, and are ſparing in " their tables. A diſh, conſiſting of a few eggs and " a ſalad, is enough for them; but Germans muſt " have good eating, and their bellies full (*a*)."

When

(*a*) F. C. Möser's Rights of the German Courts, Vol. I. p. 28, 31.

When we compare the ſtate of the Courts of Germany, as they gradually changed their appearance after the Peace of Weſtphalia, we ſhall find that quite another picture preſents itſelf; the cauſe of which is in many reſpects to be attributed to the two Congreſſes of Munſter and Oſnabruck. CHAP. IV.

Among other things, the circumſtance was diſcuſſed, of Ferdinand II, in the year 1636, having granted to the Republic of Venice, by a particular decree, a right to precede the Electors in rank. The Houſe of Bavaria, even before it acquired the Electoral dignity, would not acknowledge this to the Venetians, any more than to any other foreign Princes. When the Imperial Miniſters met the Venetian Ambaſſador with their carriages, and conducted him to Munſter, and he was honoured, for the firſt time, with the title of His Excellency, which was due only to miniſters of the firſt rank, and which the Electoral Envoys had not yet obtained, the Electors inſiſted upon their Envoys meeting with the ſame reſpect, that no precedency might be allowed to the Republic of Venice; though that State pretended to the right of being placed upon an equality with Kings, on account of the iſland of Cyprus, which they had enjoyed the poſſeſſion of as a kingdom from the year 1473 until 1570. The Electors were ſo firm in their demands, which were at the ſame time ſupported by the Crowns of France and Sweden, that at laſt, in 1643, a courier brought the Emperor's determination to "allow the Electoral Ambaſſadors, in God's name, to take the title of Excellency."

 Thus

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Thus the Electors obtained an unquestionable right of sending ministers of the first rank, or ambassadors as they are called, in the same manner as Kings. They continued likewise to maintain their rank, not only over Venice, but over republics in general, which were now increased in number by the addition of the Swiss Cantons and the United Provinces. In the year 1653, therefore, they inserted in the capitulation of Ferdinand IV, that neither the Envoys of foreign Potentates and Princes, nor of any Republics, should be allowed to precede the Electoral Ministers; and that the pretence of considering republics as crowned heads, as if they were entitled therefore to equal dignity, should not be regarded; that none but the Ambassadors of Kings, or of royal widows, and minors in expectation of a throne, should precede those of the Electors, who should take place of Ambassadors of all foreign Republics, and even Princes in person, without distinction; and that the Imperial decrees formerly issued upon this subject, particularly that of 1636, as it was afterwards expressly added to the decree of 1658, should be revoked and annulled. Since that time, particular stipulations have been resolved upon concerning this prerogative among the Electors themselves, August 24, 1671, which were more explicitly inserted in the Capitulation of 1711, "That their Ambassadors of the first rank, whether there were one or more, should in every respect meet with all the same honours paid to Royal Ministers." So that the Electors,

tors, even to the preſent day, maintain their right of being conſidered upon an equality with Kings.

In ſupport of this prerogative, they appeal to an ancient cuſtom eſtabliſhed for many hundred years, according to which they were never conſidered, either at the Imperial or any other Court, in any other light than upon an equality with crowned heads, royal widows, or minors in expectation of a throne, and always took place, as it was granted them by cuſtom, immediately after them, either perſonally or by their miniſters. To be ſure, the circumſtance of their not enjoying a perfect independence, like Kings and free Republics, but having the Emperor and Empire as a ſuperior power over them, ſeemed to operate againſt them. But in former times, the want of this independence was not an obſtacle; becauſe it was not thought any inconſiſtency for even Kings to acknowledge the Emperor to be their ſuperior, as the Sovereign of the world, and viſible temporal head of Chriſtendom, and as even one of the Electors was King of Bohemia. Beſides this, Charles IV.* had already declared the Electors to be ſo nearly allied to the perſon of the Emperor, that whoever made any attack upon them, ſhould be declared guilty of high treaſon, as much as if he had attacked the Emperor himſelf. In fact, however, at the election of the Emperors, the Electors were as good as independent; and as Ambaſſadors were at that juncture ſent to them from other powers, they had always an

* Golden Bull.

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an opportunity of procuring their Ambassadors the actual exercise of an equality with those of Kings.

That all this however might not rest in the mere distinctions of honour, which they claimed for their Ambassadors, the Electors soon began to establish their Courts upon the footing of those of Kings If an Elector had before kept a Marshal of the Court, a few CAMMERJUNKERN, Gentlemen of the Bedchamber, and EDELKNABEN, Pages of Honour, there were now CAMMERHERREN, Lords of the Bedchamber, and grand officers of his Court, such as Grand Marshal, Grand Chamberlain, Grand Master of the Horse, &c. The forms and ceremonies likewise were now in a higher tone: the title was introduced of "Most Illustrious Elector," and "Your Electoral Serenity." All the ceremonies of the Court, and particularly at the reception of foreign Ministers, were settled entirely after the example of royal Courts, some in imitation of France, and others of Spanish Burgundy.

All this relates in fact merely to the Electors. The Princes had no concern in the prerogatives granted to their Ambassadors at Munster and Osnabruck: they were not indulged with the privilege of sending any other envoys than those of a second rank. The arguments produced in favour of the Electors were not equally applicable to them; but there were several Princes who were of the same House as the Electors, as

as the Dukes of Palatine-Neuburg, Deux-Ponts *, Weimar, Eiſenach, Gotha †, and the Margraves of Anſpach and Bayreuth ‡. Other Princely Houſes could not be ſaid to be much inferior, either in power or conſequence, to many of the Electors, eſpecially the ſpiritual ones. What therefore could be expected, than that they would vie with them in increaſing their Court eſtabliſhments, adding to their pomp and ceremonies (*a*), and endeavouring to place their Envoys likewiſe as much as poſſible upon an equality with others.

If

* Related to the Elector Palatine.

† Related to the Elector of Saxony.

‡ Related to the Elector of Brandenburg.

(*a*) In the year 1700, an expreſs reſolution was formed on this ſubject in the name of the correſponding Princes of the ancient Houſes, "that it was juſt and neceſſary for the Princes to keep up "an equality with the Electoral Courts, in the appointment of "their officers, and conferring titles." It was reſolved for this end, therefore, to give their Premier Miniſters, and actual Privy-counſellors, the title of Excellency, as at the Electoral Courts; and as the Electors claimed a particular prerogative of appointing Lords of the Bedchamber, though this office was only of thirty years ſtanding at the Electoral Courts, and in imitation of the Imperial and Royal Courts, the Princes reſolved to introduce the ſame among themſelves, eſpecially as it required no addition to their table, nor expence, and they had only to change the title of CAMMERJUNKER, Gentleman of the Bedchamber, into that of CAMMERHERR, Lord of the Bedchamber. They reſolved, however, that this title ſhould be given to no one of a rank inferior to that of Counſellors, Major-Generals, or Colonels, that they might not meet with any difficulty about their rank at the Electoral Courts, or when they met the Lords of the Bedchamber of the Electoral Courts at another place.—MÖSER's Public Law, Vol. XXXV. p. 484.

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If the great Houses of the ancient Princes imitated those of the Electors, it was soon to be observed that the Spiritual Princes would not be behindhand. The Houses of ancient Princes likewise, who were much less powerful, did the same. After these followed the Houses which had been newly raised to the Princely dignity; and these were imitated by the Imperial Counts; and at last, even the Prelates and free Nobility partook of this general spirit of emulation: so that it was carried to such a length, that the sublime author of *Anti-Machiavel*, in describing this prevailing spirit, says, that there was scarcely a little territory in Germany, the Lord of which did not think himself in some respects equal to Lewis XIV, built his Versailles, and kept his mistresses, and soldiers (*a*) *.

Another circumstance which particularly distinguished the times before and after the Peace of Westphalia,

(*a*) Anti-Machiavel, ou *Examen du Prince de Machiavel.* Chap. x. A work composed by the late King of Prussia. Frankfort, 1768.

* As the late King of Prussia once travelled in Westphalia, he came to a small place called Schauen. This place, and a small part of the country round it, is a free independent Barony of the Empire, and belongs to the Barons von Grote. As the King stopped to change horses, the Lord of the place waited upon him, and addressed him in a speech, in which he expressed the satisfaction he felt in seeing his Prussian Majesty in his *territories*. The King smiled, and said to one of his suite, *Voilà deux Souverains qui se rencontrent.*—Collection of Anecdotes translated from the German by Latrobe. 1789.

phalia, was the remarkable aggrandizement of ſeveral Houſes. Some of theſe were conſiderable gainers immediately through the Peace itſelf; as the Houſes of Brandenburg, Mecklenburg, and Heſſe, by the ſecularization of religious foundations, as well as almoſt all the Proteſtant States of the Empire, by the appropriation of the revenues of the former biſhopricks and convents, which they were ſecured in the poſſeſſion of, from the 1ſt of January, 1624, for ever. Several Houſes likewiſe gradually came to the reſolution of introducing the right of primogeniture; ſo that in each of ſuch Houſes, or branches of a family, where this mode of ſucceſſion was adopted, it was agreed that there ſhould in future be only one in poſſeſſion of the government. This regulation not only prevented the further diviſion of the countries, but gave ſuch Houſes reaſon to expect a greater advancement in future, either by the reverſion or acquirement of new countries: a circumſtance which is ſufficiently illuſtrated by the inſtance of the Houſe of Brandenburg.

In many Houſes indeed, a part of the country was allotted for the reſidence and proviſion of the younger ſons, reſerving the rights of ſovereignty for the reigning Lord; as in the caſe of the collateral branches of Heſſe-Rheinfels, and Rothenburg in the Houſe of Heſſe-Caſſel, and the Landgraves of Homburg on the Hohe, in the Houſe of Heſſe-Darmſtadt; the collateral branch of Anhalt Hoym, in the Houſe of Anhalt Bernburg; the Counts of Brake, in the Houſe

of

BOOK VIII. of Lippe; the Counts of Phillipseich, in the House of Isenburg, &c. But in all these instances, such disputes have since arisen concerning the real connexion between the reigning Lord and the younger branches, that this measure soon ceased to be approved of; and at last, almost all the younger branches of a House had a certain sum of money allotted for their support, by way of pension. In this respect likewise, the particular States of Germany approach still more to the manner in which whole kingdoms are governed and inherited, and Princes of the Blood provided for, only by a certain revenue.

CHAPTER

THE TANJORE ... SERFOJI'S ... MAHAL

CHAPTER V.

Remarkable Alteration in the State of most of the Towns, after the Time of the Thirty-Years War, and the Peace of Westphalia.

Most of the towns of Germany declined with the Hanseatic League, which was promoted by the dreadful havock occasioned by the war of thirty years; from which, few towns have been able to recover themselves—Their influence very little at the Provincial Diet, in comparison with the Prelates and Nobility, particularly with respect to the exemption from taxation and public debt—Most of the Provincial States likewise become more dependent on the Sovereign.

AFTER the time of the Westphalian Peace, the relation between the cities and the sovereigns was, in most countries, considerably altered. During the war of thirty years, many cities had already lost the powerful support afforded them by the Hanseatic League. The new principles of commerce adopted in the Low Countries during the reign of Charles V, and in England under Queen Elizabeth, added to the aversion to the Hanseatic League in Denmark and Sweden, first occasioned the gradual decline of the commercial advantages enjoyed by the towns in Germany; and this circumstance caused many of them, which no longer derived any of the profits which

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which they formerly enjoyed, and ſtill felt the weight of the contribution, to withdraw themſelves entirely from the Union. Ferdinand II, even in the war of thirty years, preſuming upon the power of the Hanſe towns, thought he ſhould be enabled, by their means, to ſend a fleet to the Baltic. With this view he convened the cities of Lubeck; Roſtock, Wiſmar, Stralſund, and Lauenburg, in the years 1626 and 1628, and raiſed their expectation of enjoying again great commercial advantages in Spain: but he could not accompliſh his deſign. In the year 1630, a Diet of the Hanſeatic towns was again convened; but almoſt all of them were abſent, and the greateſt part expreſſed an inclination to diſcontinue the league: it was renewed, therefore, by the three Imperial cities of Lubeck, Hamburg, and Bremen, alone; and thoſe three cities have continued their connexion to the preſent day (*a*).

Although the King of Sweden was bound by the Peace of Oſnabruck to preſerve the liberties of trade and navigation of the Hanſe towns, as they were in poſſeſſion of them before the war (*b*), yet this was no advantage to the provincial towns of Germany, a great number of which were formerly members of the League. An article inſerted in the Capitula-

(*a*) Büsch's Welthändel, Affairs of the World. Second Edition. Hamburg, 1783. P. 136, 140.

(*b*) Peace of Oſnabruck, Art. x, § 16.

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Capitulation of 1742, in reference to this article of the Peace of Weſtphalia, promiſes indeed to protect the commercial cities in general, but particularly thoſe which carried on a maritime commerce for the public good, in preference to others, as Lubeck, Bremen, and Hamburg, in their navigation and trade, their rights and privileges (*a*). Of the other cities, except ſome few which are ſituated on the Baltic, or on ſome principal river, or have the privilege of holding fairs, and enjoy the liberty of trading in ſome ſtaple commodity, or elſe have eſtabliſhed particular manufactories, and increaſed their trade by a ſpirit of induſtry, there are ſcarcely any remaining, ſince the Peace of Weſtphalia, which can boaſt of any great commercial advantages.

Otherwiſe, for the moſt part, only ſuch cities as happen to be the reſidence of a Sovereign, and have a court, or an univerſity, or elſe are celebrated for their mineral waters, ſalt-works, mines, or other advantages of that nature, have been able to raiſe themſelves to any degree of eminence: a prodigious number of towns have never been able to recover the loſſes they ſuſtained through the horrors of the war of thirty years. If we were to place each individual town of Germany in the ſtate it was in before and during the war of thirty years, in a comparative point of view, the picture would be dreadful beyond conception. The city of Magdeburg alone had formerly no leſs than 30,000 inhabitants; but

(*a*) Capitulation, Art. vii, § 2.

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after its deſtruction by Tilly, only 400 remained. The city itſelf was razed to the ground, and had ſcarcely one ſtone left upon another*. In the city of Frankenthal, where there were 1800 inhabitants, who were moſtly artiſts and manufacturers, the number was reduced to 324. In Gottingen there were 1000 houſes: in the war, 179 were pulled down or fell of themſelves, 237 remained uninhabited, 137 inhabited only by widows, and only 460 by burghers and ſtrangers†. The reparations of Minden, which was one of Tilly's garriſon-towns in 1625, coſt, in two years, 600,000 dollars; and a tax was fixed upon the houſes of the burghers, under the name of the EINTHEILUNGS CAPITALIEN, which continues even now. In the bailiwick and town of Leonberg, in the country of Wurtenberg, 1270 burghers emigrated, 885 houſes were deſtroyed by fire, and 11,594 acres of land were left uncultivated. In the whole dutchy of Wurtenberg, no leſs than 57,721 families were ruined; 8 cities, 45 villages, 158 houſes of the clergy and ſchool-maſters, 65 churches, and 36,086 private houſes, were burned to aſhes! If we had no more ſuch liſts of countries

* PUFFENDORFF, lib. iii, § 15. HART's Life of Guſtavus Adolphus. STRUV. lib. c. p. 1270. HENRY CALOISIUS on the Deſtruction and Rebuilding of Magdeburg.—Magdeburg, 1772.

† In ſo miſerable a ſtate were ſeveral of the towns, that at Nordheim, near Gottingen, upwards of 320 houſes, which were uninhabited, were deſtroyed to procure fuel from the timber for the winter; and the number of diſtreſſed widows exceeded that of the burghers.—SPITTLER's Hiſtory of Hanover, Vol. II. p. 40.

countries and towns than this, is it not ſurpriſing that ſuch wounds as theſe have been healed in the manner they actually were, by the reſtoration of peace, and that the pain was ſo ſoon forgotten? CHAP. V.

Population, indeed, was in ſome degree promoted by many of the ſoldiers from the diſbanded army marrying and ſettling in thoſe parts of the country where they happened to be at the time of the Peace, or where their inclinations chiefly led them (*a*). Many of the former inhabitants likewiſe, who had fled, returned perhaps to their native countries; but the proſperity which they enjoyed, or the reſtoration of it, was not to be expected; eſpecially as contributions were univerſally levied, to diſcharge the debts contracted in the war, and the burthen was ſtill further increaſed by the neceſſary contributions to diſcharge the new debt of five millions to the Swedes.

In many countries Provincial Diets were frequently held, to bring the finances into ſome degree of order, and make other uſeful regulations; but a circumſtance occurred to prevent this, which in the conſtitution of moſt countries has never yet been remedied, and which has proved highly prejudicial

(*a*) Two thouſand ſoldiers from the Swediſh army ſettled at once in the country of Wurtenburg. There was no want of women; and it was eaſy to find lands to cultivate.—SATTLER's Hiſtory of Wurtenberg, Vol. IX. p. 97.—SPITTLER's Hiſtory of Wurtenberg, p. 274.

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to the towns, and the flouriſhing ſtate which a country might naturally expect to reſult from an extenſive trade. It is true that cities as well as the Nobility and Prelates have their votes at the Provincial Diets. Without their conſent, no new burthen can be laid upon the inhabitants; but, on the ſide of the Nobility, every poſſeſſor of a free eſtate may attend at the Diet, and deliver his ſentiments in perſon. The Prelates likewiſe may do the ſame: whereas the towns appear only by deputies, which all together have ſeldom the weight that the Prelates and Nobility have individually. Beſides this, it is requiſite for them to poſſeſs no ſmall ſhare of eloquence and abilities, as well as reſolution, firmneſs, and real patriotiſm, if they wiſh to promote the intereſt of the towns with the ſame zeal and effect with which the Nobility and Prelates proſecute their own concerns.

At the origin of taxation in Germany, affairs were certainly ſo circumſtanced, that the Sovereign uſually made a propoſition to the States, that they would allow a tax to be laid, not only on the ſubjects of bailiwicks, which belonged to the Sovereign himſelf, but on thoſe in the juriſdictions of the Nobility and Prelates, and on the cities; that the ſum ſo raiſed might be appropriated to the diſcharge of the debts of thoſe domains which were moſt involved, or elſe to make good the revenues of the Sovereign, for which the income ariſing from his own eſtates was no longer ſufficient. It was no more the intention that the Sovereign's own domain ſhould be included in the

the tax, than the eſtates of the Prelates or Nobility; but it was a general tax upon the peaſants *, which without the conſent of the Prelates and Nobility could not be levied on their tenants. In this reſpect therefore, as far as the tax was granted for the diſcharge of the debts of the domains of the Sovereign, or to make good their deficiences, this might certainly be the firſt foundation of the Prelates and Nobility being exempted from taxation, and that they granted the tax, not for their own eſtates which they had the immediate enjoyment of themſelves, but only for the peaſants who reſided within their juriſdiction, or were their tenants.

This exemption from taxation met with further ſupport in the appeal made by the Prelates to the immunities granted them in ancient times by the Canon Law, and the appeal of the Nobility to the feudal ſervice, by which they held their eſtates, upon the condition of equipping a certain number of horſe, and ſerving themſelves in perſon. Neither of theſe circumſtances could be applied to the towns; and theſe were only allowed an exemption from taxation, with reſpect to what the cities poſſeſſed as their common property; ſo that no tax was levied upon ſuch eſtates as belonged to the citizens in general, as the public domain, but only upon the individual burghers and other inhabitants. But what a prodigious inequality was this; ſince for ten cities in a

 country,

* Hintersassen. Thoſe who hold lands under a feudal lord, as meſne-fiefs; a ſort of copyholders.

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country, there might very easily be some hundred estates belonging to noblemen! each of whom was exempted from taxes himself, and suffered the burthen to fall upon his tenants; while the cities only enjoyed an exemption from taxation for the estates which were held in common, and not for the individual burghers. The whole burthen therefore of the taxes fell uopn the burghers and the peasants, and more sensibly oppressed the former, as the sums levied on the towns were in proportion to the number and circumstances of the inhabitants; and as every town had commonly their weight of debts besides, and every burgher was obliged to contribute his quota to the support of a variety of institutions for the public benefit.

All this, however, relates merely to such taxes as were levied to complete the revenues of the Sovereign: but in time of war, if a hostile army makes a demand upon a whole country, and threatens, if those demands are not satisfied, to enforce them by fire and sword—if such exactions of money are made to prevent a place from being burnt, or a sum of money is borrowed and advanced to prevent the whole country from being ravaged—ought the private estates of the Prelates and Nobility in that case to be free? The reason for the tax is here undoubtedly totally different; and neither the immunities of the Clergy, nor the feudal service of the Nobility, can come into any consideration. For this reason, in the reign of Charles V, the obligation to pay the assessment levied

levied for the war againſt the Turks, was univerſally acknowledged ſeveral times without any exception whatever; and ſurely the Nobility can claim no exemption from taxation, when the cuſtomary feudal ſervice of equipping horſemen totally ceaſes, which was nearly the caſe in the war of thirty years; for at that time it was ſeldom required, and ſcarcely ever ſince: and as the art of war is totally changed, is has now become wholly out of uſe.

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Notwithſtanding this, the Nobility and Prelates in moſt countries pretend to an unlimited right of being exempted from taxation, or elſe of contributing a trifling and very diſproportioned ſum, even in ſuch caſes where, according to the general principles of policy, every member of a country ought in juſtice to contribute his quota to alleviate the burthen of the community, according to the ſtate of his circumſtances, and the protection and other advantages which he enjoys. This was particularly the caſe in many countries with the debts which were contracted by whole provinces, in order to raiſe the ſum requiſite for their contribution to the debt of five millions due to the Swedes, or on account of the calamities occaſioned by the war of thirty years.

It frequently happened that ſingle Prelates or Noblemen, or perhaps even the Sovereign himſelf, either advanced the money which the country was obliged to take up upon intereſt, or elſe paid the capitals advanced by other creditors, and thus redeemed the writings of the provincial debts and mortgages.

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mortgages. In this case there could not well be a better method than to secure the interest of their capitals; and what inducement had a Sovereign, a Prelate, or a Nobleman, to wish for the reduction of such provincial capitals, or the diminution of this species of national debt?

Thus, the cities in particular naturally sunk deeper and deeper under the weight of perpetual taxes, from which they never could recover themselves: and in these circumstances, how was it possible to rise to any flourishing condition; especially as in many countries the Prelates and Nobility still continued to establish, on their own estates, or in the villages within their jurisdiction, what was before considered as rights peculiar to the towns, for the maintenance of the burghers, such as breweries to supply the public with beer, different branches of commerce, incorporated trading companies, &c.?

In many towns, likewise, the mode of appointing the magistrates, and administring the public affairs, was in many respects highly exceptionable: at least the burghers frequently complained of the city-senate consisting chiefly of persons related to each other, or connected by marriage; that the revenues of the common city lands were applied to the advantage of private persons; that no regular accounts were kept, &c. As long as a town was in possession of an armoury of its own, and proper weapons of defence, and was able to maintain a sort of independence by means

means of the Hanseatic League, or by connexion with other towns, the Sovereign could not interfere in concerns of this nature; at least, not with any degree of effect: but these circumstances were considerably altered by the war of thirty years, and the Peace of Westphalia. Many towns were already reduced to dependence upon the territorial Lords, and others were gradually compelled to submission. Several of them were certainly gainers by this event; and their internal state considerably improved, when the government, upon equitable principles, concerned themselves with their internal administration, only with the intention of restoring them to their former flourishing condition.

Of this, the town of Gottingen itself is a sufficient evidence. In the year 1664, Duke George William took the office of chief-justice of the town, together with the tolls, coinage, and concerns of exchange, after redeeming them, into his own possession again. In 1677, Duke John Frederick appointed a commission to inquire into the complaints, made by the incorporated trading companies, concerning the bad management of the city revenues, the unequal division of the common burthens, bad regulation of the breweries, improper appointment of the senate, &c. At last, in the year 1690, Duke Ernest Augustus turned all the senators out of office, and appointed others (*a*).

But

(*a*) Gottingen Chronicle, Vol. I. p. 214—218, 220.

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But what a different relation arose now between the cities and their territorial Sovereigns, in comparison with that in former times! In the year 1500, when a Princess of Mecklenburg was going to be married at Cassel, she came through Gottingen, with her whole family, attended by a cavalcade, consisting of 400 riding, and 200 carriage-horses: the Senate of Gottingen sent two of their body with forty horsemen two hours* distance to meet and conduct her to the city: three hundred burghers in complete armour received her at the gate, and all the other gates of the town were shut. The Princess's attendants were afterwards lodged at different inns, and presented with a cask of Einbeck beer, ten gallons of wine, ten coomb of oats, &c. (*a*)

In the year 1571, the Senators of Gottingen were invited to stand godfathers to their infant Sovereign, Duke Julius, at Brunswick, and sent two of their members, with a secretary, to act as proxies. In the year 1585, likewise, they were invited to the wedding of the hereditary Prince, Henry Julius, who was married at Wolfenbuttel to a Saxon Princess; and the burgomasters attended, with the city guards † and five esquires‡, all properly equipped

* In Germany they usually measure distance by time: two hours are reckoned to a mile of that country, which is about five English.

(*a*) Gottingen Chronicle, Vol. I. p. 21.

† TRABANTEN, Trabans, or Halberdiers.

‡ KNECHT. This word commonly implies a servant; but it is often used as a Knight's attendant, or Esquire.

ped (*a*). It appears that the town was in ſuch a flouriſhing condition, about the year 1475, that it contained no leſs than eight hundred maſter clothiers and woollen manufacturers; that it was common for the merchants of Augſburg, Frankfort, Nurenberg, Lubeck, Hamburg, Leipſic, and Luneburg, to attend the fairs; and the city was not only in poſſeſſion of ſeveral villages, but a whole adjacent bailiwick, and the mortgage of a noble judicatory (*b*). This ſingle inſtance is ſufficient, I think, to give ſome idea of the great alteration which took place in moſt, if not all, of the provincial towns of Germany, at the time of the war of thirty years, and the Peace Weſtphalia.

(*a*) Gottingen Chronicle, Vol. I. p. 23.

(*b*) Gottingen Chronicle, Vol. I. p. 37, 38.

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CHAPTER VI.

Conſtitution of the Imperial Cities, as it was eſtabliſhed by the Treaty of Weſtphalia.

All Imperial cities have a republican form of government, more or leſs ariſtocratical, and ſometimes even democratical—Some have the remains of the ancient Imperial provoſtſhips—In other reſpects, every Imperial city has now its own territorial ſovereignty—The Emperor levies an annual tax in ſome Imperial cities, and, in general, exerciſes more power over them than over other States of the Empire.

SOMETHING ſtill remains to be ſaid reſpecting the Imperial Cities, as their conſtitution is not included in that of the Principalities and Counties, which has been already deſcribed, but they have each of them a peculiar form of government. It muſt not be ſuppoſed that all the Imperial cities have adopted the ſame regulations—By no means!—Such is the freedom of Germany, that every city is at liberty to make its internal regulations as it ſuits its own convenience. An Imperial city, it is true, has one thing in common with the other towns, that the magiſtracy forms a ſort of College, uſually known by the name of the Burgomaſter and Senate. In this reſpect, therefore, all Imperial cities have a republican form of government, viz. that not one

of

of them is governed by any individual vested with authority, in the manner of a monarchy: on the contrary, most of them have had their republican liberty firmly established by the Peace of Westphalia having declared the former rights of the Emperors to nominate Provosts, and dispose of the chief offices of justice, which were pledged to the cities, to be irredeemable for ever. Whether the magistrates of a city govern it at present aristocratically, or with the concurrence of the burghers, or whether the government is more or less democratical, is a different question.

In many Imperial cities this has been the occasion of much blood-shed; for the incorporated trading companies have often opposed their magistrates with violence, when they have attempted to act despotically, or in a manner which in their opinion was illegal. But their opposition has not always succeeded: sometimes the magistracy, and sometimes the citizens, have gained the advantage, according as one party or the other prevailed in this sort of civil war, and was obliged to make a greater or less concession when matters were compromised, or else when complaint was made to the Emperor, or one of the supreme tribunals, according to the decision then given, or to the decision of a local committee appointed by the Emperor to examine into the affair.

There are some Imperial cities where the government is exceedingly aristocratical, as the city of Nu-

renberg.

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renberg. In ſome places, that moſt deteſtable of all forms of government prevails, where, in the manner almoſt of an hereditary ariſtocracy, a certain number of noble or patrician families have either the excluſive or the principal right of being ſenators. This evil, however, has been variouſly mitigated. A law has ſometimes been made, that no near relations ſhall be members of the ſenate at the ſame time; and that, beſides a few privileged families, ſenators ſhould be choſen likewiſe from among the burghers; or elſe that the citizens ſhould have their ſhare in the nomination of the candidates, either by actually propoſing them, or elſe co-operate by having an excluding vote: and in ſome places it is cuſtomary even to chooſe the ſenators by lot.

In many Imperial cities the magiſtrates are obliged to ſubmit to every kind of reſtriction; ſo that the conſent of the burghers is neceſſary for the formation of new laws, introduction of new impoſts, and arbitrary expences beyond a certain ſum, as well as for the alienation of the public lands, &c. Accounts, likewiſe, of the public revenue and expences muſt be ſubmitted to their inſpection, with a variety of other things of the like nature. But, notwithſtanding this, there cannot properly be ſaid to be any democracy, as long as the magiſtrates are not conſidered as a college ſubordinate to the city and burghers in general: neither does it follow, that this is a form of government between an ariſtocracy and democracy; but, as monarchies are divided into two kinds, limited

limited and abſolute, ſo we may form an idea here of two different kinds of ariſtocracies, which in certain caſes are obliged to have the conſent of the people, or elſe have unlimited power, and act for themſelves. The limited ariſtocratical government, is properly that which actually prevails in moſt of the Imperial cities, where the burghers have a voice in all matters of importance. In ſeveral Imperial cities, however, for inſtance, even in Hamburg, the principle has been adopted, that the KYRION, from the Greek word το κυριον, which is uſed to expreſs the magiſterial power, not only includes the magiſtrates, but the ſenate and burghers.

Every thing elſe is ſettled now, in each of the Imperial cities, by particular regulations. Some indeed have not been able to free themſelves from the ancient provoſtſhips *, which neighbouring States ſtill maintain

* REICHSVOGTEY. This word is variouſly tranſlated: I find a VOGT occaſionally called Advocate, guardian, protector, ſteward, ſheriff, provoſt, bailiff, and prefect, and even conſtable; and VOGTEY, Bailiwick, provoſtſhip, prefecturate, &c. It is probably derived from the Latin word *advocatus*, and corrupted by the barbarity of the middle ages. The word VOGT at preſent ſignifies an officer of juſtice, and is uſed in various acceptations: ſometimes it is an office of the higheſt rank, as the GROSS VOGT, which may be tranſlated High ſheriff, or grand bailiff, of Zelle in the country of Hanover, who is one of the Lords of the Regency. The VOGT of a village is a ſort of Bailiff, or inferior juſtice of peace; and ſometimes the word is uſed even for a Jailor. In Upper Saxony it ſignifies a Steward, or officer of police in general

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maintain the possession of by custom; as that of the House of the Elector Palatine, in behalf of Juliers and Berg, in Aix-la-Chapelle, and that of Hesse-Darmstadt at Wetzlar. In the towns where these provostships exist, the Courts to whom they belong, appoint a proper person to execute the office; but the prerogatives annexed to it have often been productive of contention; as, for instance, concerning the right of garrison, the exercise of criminal jurisdiction, interference in matters which concern the police, &c. In many Imperial cities there is only a sort of protective jurisdiction * exercised by a neighbouring State, as that of the House of Brunswick at Goslar.

In other respects, every Imperial city has undoubtedly the same right of sovereignty in its own territory, both within and without the walls, as the higher States of the Empire. This right, however, does not appertain so much to the magistrates, as to the town in general. Some distinction may be observed indeed between Imperial cities and other

* SCHUTZGERECHTIGKEIT, a jurisdiction exercised by the SCHUTZHERR, or protector of the place. Of this there are frequent instances. In the middle ages, many cities, and even countries, and particularly abbies and convents, chose some powerful Lord in the neighbourhood for their patron or protector; for which they indulged him with the privilege of holding courts of judicature, &c. This is the case at present with the Abbey of Gandesheim, whose patron is the Duke of Brunswick-Wolfenbuttel; the Abbey of Corvey, where the House of Brunswick has a criminal jurisdiction in the town of Höxter, &c.

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other States; for the latter commonly take an oath of allegiance, as vaſſals to the Emperor, but on that account do no particular homage; while, with reſpect to the cities which are in themſelves not fiefs, though they may accidentally perhaps have eſtates that are fiefs in their poſſeſſion, it is ſtill uſual both for the burghers and the garriſon, if there happens to be any, as well as for the magiſtrates, to do homage to every newly-elected Emperor; and the Emperor either receives the homage in perſon, as has been uſually the caſe at Frankfort after the coronation, or appoints an Imperial Commiſſary for that purpoſe; or elſe a city, which is very often the caſe at preſent, is allowed by diſpenſation to inveſt an agent at Vienna with full powers to take the oath of allegiance in the joint name of the magiſtracy and burghers.

In former times, the Emperors raiſed annually a ſum of money, as a tax, from all the Imperial cities; but many of them have lately procured an exemption from the payment of it. Some, however, are ſtill under the neceſſity of paying this annual tax at preſent, as the city of Frankfort, which pays, every autumn, the ſum of 2784 florins (*a*); and there are ſtill frequent occaſions where it cannot be denied that the Imperial Court aſſumes much greater power over Imperial cities, than over the other States.

(*a*) Journal of the Tranſactions at the Election of the Emperor Francis, Vol. II. p. 179.

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CHAPTER VII.

Sequel of the Hiſtory after the Peace of Weſtphalia—Election of a King of the Romans—Statutes of the Aulic Council, and Receſs of the Empire, 1654.

Ferdinand IV. elected King of the Romans—Laſt Receſs of the Empire—Statutes of the Aulic Council—Objections made to them by the States, and decree of the Emperor—The laſt Receſs only mentions the Aulic Council in a few paſſages—In general it ſpeaks only of the Imperial Chamber—The preſent Chamber-terms date their commencement from this time, as well as the preſent mode of preſentation—A viſitation reſolved upon to renew the former reviſions, which was to conſiſt of five claſſes, each conſiſting of twenty-four States, but not eſtabliſhed till a hundred years afterwards, and then came to nothing—The number of cauſes decreaſed at the Imperial Chamber, by the ſum of appeal being raiſed, and by granting privileges; on which account it was allowed to ſend the writings of the cauſe to be reviſed, or elſe to eſtabliſh High Courts of Appeal—Statute of execution renewed, and the States allowed to levy the money neceſſary for the ſupport of fortreſſes and garriſons upon their ſubjects.

IMMEDIATELY after the Peace of Weſtphalia, and the negociations which were at laſt ſet on foot for its execution, the general expectation was fixed upon the Diet, to which ſo many objects of conſequence had been referred, and ſtill remained for deciſion. Ferdinand III. iſſued the uſual ſummonſes,

April

April 27, 1652, according to which the Diet was to be opened in the month of October the ſame year at Ratiſbon. He contrived however to procure his ſon Ferdinand IV. to be firſt elected King of the Romans at Augſburg, May 21, 1653, by which the hopes afforded by the Peace of Weſtphalia, of an agreement between the Electors and the other States reſpecting the election of a King of the Romans, and a perpetual capitulation, were for ſome time fruſtrated, to the great diſſatisfaction of the Princes; though the early death of Ferdinand IV, which happened June 29, 1654, again thwarted the Emperor's deſign.

The deliberations of the Diet were firſt opened June 17, 1653, by a propoſition from the Emperor. On the 17th of May, 1654, ſo that a full year had ſcarcely elapſed, they were cloſed by an Imperial Receſs, which, as there has never been another of the kind ſince, has always been called the JÜNGSTE REICHSABSSCHIED, or laſt Receſs. The contents ot this related chiefly to an improvement in the adminiſtration of juſtice in the Empire, as it had in a great meaſure been previouſly agitated by the Aſſembly of Deputations in 1643. Many caſes of reſtitution, which had remained ever ſince the Peace of Weſtphalia, on account of the amneſty, or complaints, were again referred to another Aſſembly of Deputations, or a future Diet.

The whole Empire was in expectation that the Emperor would make ſome propoſition at the Diet

 concerning

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concerning suitable judicatory statutes and rules to be observed in proceedings of the Aulic Council. According to the literal articles of the Treaty of Westphalia, which positively ordained that no law whatever should be made without the deliberation and consent of the Diet, it was considered as a settled point, that no rules could be established for the Aulic Council, without being first submitted to the deliberation of a general Diet. Ferdinand III, however, had acted in the same manner as Ferdinand I, Rudolphus II, and Mathias, had done formerly, and made statutes, or rather instructions, for the Aulic Council, of his own accord (*a*); and on the 16th of March, 1654, he promulgated them, without waiting for the approbation of the Empire.

In these new statutes was preserved the principal part of the old statutes or instructions above mentioned. Here and there an article was inserted, which had been proposed at the Assembly of Deputations; and most of what the Peace of Westphalia ordained, was translated literally: some part of them, however, was so worded, that the design of the Peace was by no means answered. Where, for instance, it is said in the Peace, "that the statutes of the Imperial "Chamber shall be observed throughout in the Aulic "Council (*b*), the statutes of that court say, that "the

(*a*) Osnabruck Peace, Art. viii. § 2. See p. 87.

(*b*) Osnabruck Peace, Art. v. § 54. "Quoad processum judiciarium, ordinatio Cameræ Imperialis etiam in Judicio Aulico servabitur *per omnia*."

" the Aulic Council ſhall obſerve the ſtatutes of the " Imperial Chamber as much as poſſible." Here, however, the paſſage which had been already inſerted in the ſtatutes of the Emperor Mathias in 1617, was repeated, " that the Aulic Council in particular " ſhould not deviate from what concerned the ſub- " ſtance of the proceſs, but not by any means be bound " by any of the ceremonies of courts of law." This circumſtance may be illuſtrated by an alluſion which had been made on ſeveral occaſions to certain paſſages in the Juſtinian code of laws, that the ſupreme tribunal of juſtice, which was held under the eye of the Monarch himſelf, was not under any obligation of a ſtrict attention to the ſubtle formalities of law, but might proceed directly to the point. In another article of the Peace of Weſtphalia, in which the viſitation is mentioned, reference is made to what would be ſettled on that ſubject at the Diet. Ferdinand III, on the contrary, left the matter as the Peace had ordered it (*a*).

The States did not neglect taking every opportunity of remonſtrating againſt theſe ſtatutes; but, notwithſtanding this, they did not ſucceed till the year 1711, in procuring a decree, in which Charles VI. however ſtill ſtrenuouſly inſiſted upon ſeveral things contained in them (*b*). An article was inſerted upon

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(*a*) Page 107, &c.

(*b*) Thus in Art. xix.—Whereas it has been repreſented to his Imperial Majeſty, that ſome of the Council, although they have not

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this subject in the Capitulation of 1742, by which the statutes of the Aulic Council, together with the articles inserted in the statutes of 1714, at the instance of

not been present during the whole of the relation of a cause, yet often vote with the rest, and thereby contribute, and even sometimes only to oblige another, to form a majority, which his Imperial Majesty is not willing to suppose of the members of his Aulic Council, who have the fear of God before their eyes, and a love for justice and honour; yet, for the sake of equity and order, he has been graciously pleased hereby seriously to order, that such partiality may not prevail in future, and that the Council will not only desist from the tedious and sometimes unnecessary voting and relations, but from reading the newspapers, and other amusements, to pass away the time, instead of attending properly to business, of which every one's conscience must warn him of the impropriety; and that in future those Counsellors who were not present at the beginning of a relation, shall not have their opinions asked in causes which they have not thoroughly heard, or at least they shall not give their votes; and whenever the President of the Aulic Council shall observe one counsellor giving his vote to oblige another, or any faction arising among the counsellors for or against a cause, or the Relator of it, which is by no means decent in a court of judicature, and especially such a court as this, and contrary to a counsellor's oath and duty, the President, or his representative, shall in that case proceed as directed by the statutes of the Aulic Council, and warn those who are guilty, of the impropriety of their conduct. If, after such warning, they persist, and cannot be prevailed upon to change their conduct, in such cases of necessity their names shall be reported to his Imperial Majesty: otherwise a decision shall be made in all causes by the majority; or else, in cases of great importance, where the opinion of the counsellors is tolerably equally divided, and both sides are provided with solid arguments in favour of their cause, the two opinions shall be reported in writing to his Imperial Majesty, and the Court wait for his final decision.—SCHMAUSS, *Corp. Jur. Publ.* p. 1262.

of the States, were recommended to be uſed proviſionally, till a perfect ſet could be drawn up by the Emperor and Empire, ſuitably to the circumſtances of the preſent day; which has never yet been done. CHAP. VII.

In the Receſs of 1654, it was once curſorily mentioned, that the Emperor had demanded advice "as "well from our moſt dutiful Aulic Council as from "our Imperial Chamber of juſtice," on the queſtion which had already occurred during the negociation of the Peace of Weſtphalia, concerning the meaſures to be taken with ſuch debtors as were rendered inſolvent by war (*a*). Another paſſage occurred afterwards, in which it was ordained, that if any one commenced a proceſs, either at the Aulic Council or the Imperial Chamber, againſt a ſtatute of execution, he ſhould not be heard, and that his cauſe ſhould be immediately rejected (*b*). Except in theſe two places, the Aulic Council was not mentioned in the Receſs at all; and in the various ordinances contained therein reſpecting ſuits of law, there is nothing ſaid concerning the Aulic Council, or the two ſupreme tribunals of the Empire in general, but the Imperial Chamber alone. Notwithſtanding this, there is not a doubt, but that the ſame preſcriptions here laid down for the Imperial Chamber, are to ſerve equally as rules for the Aulic Council. Moſt of the ordinances made for the Imperial Chamber were already prepared by the Aſſembly of Deputations in 1643, when the queſtion

(*a*) Receſs, 1654. § 170.
(*b*) Receſs, 1654. § 180.

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question respecting the concurrent jurisdiction of the two courts was not finally decided. Perhaps that was the reason why the Aulic Council was not mentioned in this Recess, but only the Imperial Chamber, as the express object of the legislation.

In treating of the Imperial Chamber, the Recess, which principally related to the concerns of that court, was more explicit. It was taken for granted, that in obedience to the articles of peace, this tribunal was to be composed of fifty Assessors, each of whom, it was now settled, was to have a thousand rix-dollars (or two thousand florins) for his salary. It was resolved, therefore, for this reason, to raise the matricula of the Chamber, or the sum which every State was to contribute to its support, in proportion, and to commence the computation of the number of terms from the year 1654, which has been ever since continued; so that 263 terms were reckoned till the end of the year 1785; and there was good reason to hope, that there would be no deficiency in the necessary contributions of money, as it was expressly ordained in the Recess, that the States of the Empire should be at liberty to raise it by levying a tax upon their Provincial States, the burghers of their towns, and other subjects (*a*).

The Electors and Circles in whom the presentation of the Assessors was vested, did not delay making the necessary arrangements for the purpose. Five persons

(*a*) Recess, 1654. § 14.

perfons were agreed upon at a Diet of the Circle of Lower Saxony, and appointed to the office; but the money which was actually raifed was fcarcely fufficient to pay the falary of thirteen Affeffors, all together. So foon therefore as the Affeffors who were prefented, exceeded that number, they were obliged, unlefs they were difpofed from pious motives, and the pureft love of juftice, to work for nothing, to return to their own country again, and wait till there was a fufficient number of vacancies for them to fucceed in their turn. The Chamber therefore continued to confift of a very fmall number of perfons, who were far from being equal to the labour. According to certain accounts, there were no lefs than fifty thoufand written cafes in the archives of the Imperial Chamber, even in the year 1620, which had not then come to a trial (*a*). This number may perhaps be rather exaggerated; but we may be certain that the number of caufes which have been annually accumulating, and ftill wait for decifion, is prodigious.

Many of the caufes likewife, which were referred to a revifion, met with a fimilar fate; for none of them have come to a trial fince the year 1582. The number of them, however, was conftantly accumulating, becaufe in thofe days it was fufficient to apply for a revifion, in order to be fecured from the execution of the fentence, which this recourfe was defigned to obviate. Thus the whole authority of the Court was

(*a*) MEIER's Negociation of the Peace of Weftphalia, Vol. III. p. 316.

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In order to remedy this, the Receſs ordained that an extraordinary Aſſembly of Deputations, conſiſting of twenty-four States of the Empire, of both religions, ſhould be held on the 1ſt of November, 1654, at Spire; and that, after ſettling the form of the viſitation, they ſhould examine the cauſes which remained to be reviſed; and that the twenty-four States ſhould for this end be divided into four Senates. That on the 1ſt of November, 1655, twenty-four other States ſhould relieve the firſt; and that this change ſhould afterwards take place every half-year, till all the old cauſes were finiſhed. Five claſſes were fixed upon for this purpoſe, each conſiſting of twenty-four States, of both religions, which were to relieve each other alternately. When this buſineſs was completed, the former mode of ordinary viſitations was to be re-eſtabliſhed, according to a plan expreſsly drawn up for the purpoſe; but the whole affair

(*a*) At the laſt viſitation in 1776, which had ſuch an unfortunate end, the officers of Chancery gave a liſt of 61,283 different cauſes: one cannot, however, accurately tell how many of this number actually waited for deciſion.—BALEMANN's Contributions to a Reviſion of the Statutes of the Imperial Chamber, p. 11. Lemgo, 1778.

affair was rendered abortive. The viſitation which was to have commenced in November, 1654, did not take place till May, 1767, and came, alas! to an untimely end, in May, 1776. In the Receſs of 1654, it was fortunately ſettled, that the execution of no ſentence ſhould be prevented, by waiting for a reviſion, in future, unleſs the parties which gained the cauſe depoſited ſecurity, that in caſe a reviſion ſhould take place, and the preſent ſentence be reverſed, they would reſtore whatever the law had determined in their favour. But how few are there who are capable of giving ſuch ſecurity! CHAP. VII.

The number of law-ſuits which were brought before the Imperial Chamber, were ſomewhat decreaſed by the ſum, under which no one was formerly legally allowed to appeal, being raiſed from three to ſix hundred florins (*a*)*. Several of the States have obtained a privilege from the Emperor, by which the ſums, under which no appeals can be made from their own courts of judicature, have been fixed at a higher rate (*b*); and ſome

(*a*) The ſum of appeal fixed upon by law, in 1521, was at firſt only 50 florins. By the Receſs of 1570, § 66, it was raiſed to 150: and the Receſs of the Aſſembly of Deputations, in 1600, § 14, raiſed it to 300. The laſt Receſs, § 112, fixed the ſum at 600 florins, or 400 rix-dollars; which, according to the preſent worth of things, is no longer in any proportion, but ought to be raiſed again.

* In Engliſh money, 66*l.* 13*s.* 4*d.*

(*b*) The city of Hamburg procured an exemption from appeal, in ſums not amounting to 700 florins, April 6, 1554. The Biſhop of

BOOK VIII. ſome have even obtained an unlimited exemption* from all appeals whatever (*a*).

That

of Wurtzburg procured the ſame privilege, for ſums under 1000 gold florins, March 22, 1586; the city of Lubeck, 500 gold florins, May 23, 1588; Augſburg, 600 gold florins, July 30, 1595; the Dutchy of Holſtein, 1000 gold florins, July 14, 1621; Cologne, 1000 gold florins, April 3, 1623; the County of Oldenburg, 1000 Rheniſh florins, September 19, 1637; the Dutchy of Brunſwick-Wolfenbuttel, 2000 gold florins, November 24, 1648; the County of Ranzau, 500 gold florins, November 6, 1650; the Dutchy of Mecklenburg, 1000 gold florins, October 28, 1651; and the County of Reuſs, 400 gold florins, July 28, 1655.

* This exemption is called in the German law, *Privilegium de non appellando.*

(*a*) The firſt inſtances of unlimited exemption from appeal, are for the Houſe of Auſtria, September 8, 1530; and for the Burgundian Netherlands, in the treaty concluded on that ſubject, July 26, 1548, § 5, 6. Wurtenberg likewiſe procured the ſame privilege, when raiſed to a Dutchy in 1495; and by virtue of the ſtatutes of the Aulic Council, confirmed by Charles V, in 1555, has aſſerted a right to an exemption from appeal to the Imperial tribunals in all cauſes in which the ſubjects of Wurtenberg are concerned with each other, and not at law with people of another country. The other unlimited privileges *de non appellando*, have been granted in the following order: To the Houſe of Saxony in general, May 2, 1559; the Elector of Brandenburg, July 24, 1586; the Houſe of Bavaria, May 16, 1620; in the Treaty of Weſtphalia, to the Crown of Sweden, for Pomerania, Bremen, and Verden, 1648; to the Elector Palatine, July 17, 1652; the Elector of Cologne, April 20, 1653 (this however was ſet aſide by a reſolution of the Provincial States, in 1655); to the Elector of Mentz, April 30, 1655; Elector of Brunſwick, Auguſt 16, 1716; Elector of Treves, September 30,

1721;

That the fubjects might not, by this limitation of appeal, lofe the benefit of a further refort, it was allowed, in fuch caufes where there was no appeal, to fend the writings to fome impartial College of Juftice, and petition for a revifion (*a*); or elfe it was expected that a State which was totally exempted from appeal to the tribunals of the Empire, would eftablifh a High Court of Appeal in his own country, fuch as that eftablifhed at Berlin and Drefden; and the King of Sweden was bound, by the Peace of Weftphalia, to eftablifh the Tribunal of Wifmar (*b*) *.

Only one paffage more of the laft Recefs deferves to be mentioned, in which the ftatute of execution, in reference to former Receffes, was again inculcated, to enable the neceffary aid to be immediately and effectually employed, both againft foreign enemies and all domeftic infurrections; and, on this account, an order was made to appoint all the Colonels of the

1721; Heffe-Caffel, December 7, 1742; the King of Pruffia, for fuch territories as were not included in his Electorate, May 31, 1746; Heffe-Darmftadt, May 11, 1747; Hanover, for Saxe-Lauenburg and Land-Hadeln, November 8, 1748; Palatine Deux-Ponts, and the Elector Palatine, for Juliers and Berg, July 1, 1764; and laftly, for Mecklenburg, in confequence of the Peace of Tefchen.

(*a*) Recefs, 1654, § 113

(*b*) Peace of Ofnabruck, Art. x. § 12.

* A town fituated on a bay of the Baltic, formerly belonging to the Dutchy of Swerin, but ceded by the Peace to the Crown of Sweden.

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the Circles. And this addition was made: "That "every freeholder, subject, and burgher, in the do-"minions of an Elector and State, should be obliged "dutifully to assist their Prince, the government, "and their superiors, in contributing towards the "support of the necessary fortifications, fortresses, "places, and garrisons, belonging to this or the "other State of the Empire (*a*)." This passage has been frequently made a pretext for imposing it as a duty on the Provincial States to submit to a tax, even without their consent, not only for the objects here mentioned, but for the Chamber-terms mentioned in the passage quoted above (*b*).

Many Provincial States protested against this, and appealed to various stipulations, and their constitution as it was established by ancient usage: according to which, a territorial Lord was obliged to defray such expences from the revenues of his own domain, and no tax whatever could be imposed without the consent of his States. But according to the subordinate relation in which all Provincial States in Germany stand to the Emperor and Empire, there can be no doubt but that a general law of the Empire, which ordains any thing new for the public welfare, must be complied with likewise by every individual Provincial State; they have all therefore, sooner or later,

(*a*) Recess, 1654, § 180.

(*b*) Recess, 1654, § 14. See p. 219.

later, been obliged to ſubmit. The new election which was ordered of the Colonels of the Circles, was not on this occaſion accompliſhed; and in moſt Circles theſe offices, or at leaſt the prerogatives annexed, have been appropriated by the ſummoning Princes themſelves. CHAP. VII.

CHAPTER VIII.

Dispute between the two Religious Parties, concerning the so-denominated Simultaneum.

The queſtion, Whether a Catholic Sovereign, under the name of the *Simultaneum*, may introduce the exerciſe of his own religion in a Proteſtant country, where there was none in the year 1624? —This only allowed by the Peace of Weſtphalia among Lutherans and Calviniſts, or in ſuch countries which were mortgaged, and redeemed—or where the Sovereign and his country are of the ſame religion—In that caſe alone, the right of reformation is conſidered as a territorial right—but where the Sovereign and his country are of a different religion, the definitive year can be the only rule—Both rules are equally valid; not that the firſt is to be conſidered as a rule, and the latter an exception—Otherwiſe, it cannot be ſaid that the Proteſtant ſubjects preſerve what they were already in poſſeſſion of, if they are obliged to ſubmit to a *Simultaneum*—In this caſe, the compariſon of Proteſtants to foreigners of a different religion is by no means applicable—which the particular caſes that occurred immediately afterwards illuſtrate, of Hildeſheim, Palatine-Sulzbach, Höxter, and Wertheim, in which the Catholics proceeded gradually and cautiouſly.

BESIDES the legiſlative ordinances which were eſtabliſhed by the Receſs of 1654, other affairs of great importance came before the Diet, that were not wholly decided, particularly in caſes where the two religious parties were not agreed in their opinion.

One of the moſt important points in which the two religious parties differed in opinion reſpecting the meaning

meaning of the Peace of Weftphalia, difcovered itfelf at the Diet on the queftion, Whether, in a place or country where the Proteftant religion alone was eftablifhed in the definitive year 1624, a Catholic Sovereign could introduce his own religion, as a *fimultaneum religionis exercitium?* The whole queftion was afterwards comprehended under the fingle word *fimultaneum*; and even to the prefent day forms one of the moft important objects concerning which the two parties are not yet of the fame opinion, not merely as a theoretical fpeculation, but a fource from which the alteration of the ftate of religion in whole countries has derived its origin: it is therefore well worth while to examine the matter more attentively, and develope the hiftorical facts which naturally prefent themfelves in the confideration of the fubject.

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In the feventh article of the Peace of Ofnabruck, which fettled the relation between the Lutherans and Calvinifts, it was exprefsly determined, that when a Lutheran country devolved to a Calviniftical Sovereign, or a Sovereign who was before a Lutheran, embraced the doctrines of Calvinifm, he fhould not only have a right of eftablifhing that religion at his court, but of allowing its adherents the free exercife of it in his country, provided it was not prejudicial to the Lutherans; and in the fame manner, *vice verfa*, that a Lutheran Sovereign, in a Calviniftical country, fhould have the right of eftablifhing Lutheranifm, provided there was no infringement of the rights of the Calvi-

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niſts (*a*). Conſidering the near connexion of theſe two religions, it was eaſy to be conceived that theſe reciprocal conceſſions were of infinitely leſs conſequence, than if the ſame had been granted to Catholic Sovereigns in Proteſtant countries. In the fifth article, which ſettled the relation between the Catholics and Proteſtants, the reſervation that a Catholic Sovereign in a Proteſtant country, ſhould have the right of introducing the Catholic religion, was not inſerted. This circumſtance alone might certainly have been a ſufficient proof to every impartial perſon, that, though this *ſimultaneum*, as it was called, was allowed between the Lutherans and the Calviniſts, yet it was by no means conſiſtent with, or agreeable to, the context of the Peace of Weſtphalia, that it ſhould be admitted between the Catholics and Proteſtants.

As an exception to the rule, however, the fifth article of the Peace of Oſnabruck ordained, that a Catholic Sovereign, who redeemed a mortgaged land, where the Proteſtant religion had been introduced during the time of its being mortgaged, ſhould have the right of introducing the exerciſe of his own religion again (*b*): but this article had evidently the particular caſe of a country in view, which had been mortgaged and redeemed. In other caſes, the meaning of the Peace was beyond a doubt the reverſe; for otherwiſe it would not have been neceſſary to have confined the ordinance to this particular caſe alone.

It

(*a*) See page 73.

(*b*) Peace of Oſnabruck, Art. v, § 27.

It appears in a ſtill clearer light, from the context of the fifth article, and particularly from the 30th and 31ſt paragraphs, as they immediately follow each other, that the authors of the Peace had certainly the two caſes, which were of a totally different nature, in view; on the diſtinction of which every thing depends. Thus, in the firſt place, the caſe where the Sovereign and ſubjects are of the ſame religion, is treated of in the 30th paragraph, which very properly allows the right which every Sovereign, who is of the ſame religion as his ſubjects, may exerciſe with regard to perſons of a different perſuaſion; as, for inſtance, the Electoral Houſe of Hanover, at Hanover, Zelle, and Gottingen *; in the ſame manner as Joſeph II. may introduce, in his hereditary dominions, the toleration of Proteſtantiſm: all which the above-mentioned 30th paragraph comprehends under the name of the Right of Reformation *(Jus Reformandi)*; but it is a very different caſe, when Proteſtant ſubjects have a Catholic Sovereign, and he is inclined to make alterations in the country in favour of his own religion. Here the 31ſt paragraph of the fifth article eſtabliſhes the definitive epoch of the year 1624, as the only rule. If there was a city, a town, or a village, where at that period the exerciſe of the Proteſtant religion alone was allowed, a Catholic Sovereign can

* The Catholic religion is tolerated in the three cities above-mentioned, becauſe Zelle and Gottingen were formerly Ducal reſidences, as well as Hanover.

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According to this natural explication of the two paragraphs in question (*a*), it was certainly never intended that the 30th paragraph, in which the right of reforming, or allowing people of another persuasion their religious exercise, was acknowledged as a TERRITORIAL RIGHT, should be considered as a rule; and that the 31st, which fixes the DEFINITIVE YEAR as the standard, should only make an exception; and that such a relation between these two passages should be established, that the explanation of the former, as a general rule, could not be sufficiently extended; and the other, as an exception, not sufficiently limited.—By no means—Both paragraphs are certainly to be considered as rules which have equal weight, but have two distinct cases for their object, and are perfectly consistent with each other: viz. in the 30th paragraph, the case where the Sovereign and subjects are of the same persuasion; and, in the 31st, where they are of different religions. In the former case, it is still considered, that the admission and toleration of the exercise of other religions, depends upon the power of the Sovereign: in the latter, the rule is totally different, but equally general; that there every thing should remain in the state in which it was fixed by the definitive year 1624.

The

(*a*) Peace of Osnabruck, Art. v. § 30, 31.

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The connexion of the two paragraphs, in the order they ſtand, renders this ſufficiently intelligible. The 30th ſays, that the right which every Imperial State acquires, by virtue of his territorial ſovereignty, in matters of religion, ſhall continue without reſtriction. Immediately afterwards, in the 31ſt paragraph, the Peace ſays, that notwithſtanding this, the Proteſtant ſubjects of a Catholic Sovereign, ſhall continue in poſſeſſion of their religious exerciſe, with all the rights pertaining thereto, as they enjoyed it during any part of the year 1624. In reference to this ordinance, all ſentences pronounced in courts of judicature, conventions and treaties, which did not correſpond with the ſtate of religion, as it was in the year 1624, were declared in the following paragraph, viz. the 33d, to be null and void, with the expreſs addition, that the year 1624 alone ſhould be conſidered as the rule (*a*).

Though it is expreſsly ſaid therefore in the 31ſt paragraph, that the Proteſtant ſubjects of a Catholic Sovereign ſhould retain whatever they were in poſſeſſion of in the year 1624, ſtill it was not the intention that they ſhould be ſatisfied, provided that, in the ſtricteſt ſenſe of the words, nothing was taken from them; and that, on the contrary, there could be no objection to the Catholic religion being intro-

 duced,

(*a*) Peace of Oſnabruck, Art. 5. § 33. " Annihilatis omnibus, " *Anni* 1624, *obſervantiæ, utpote quæ inſtar regulæ obtineat,* con- " trariis latis ſententiis, reverſalibus, pactis, &c."

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duced, besides their own which they enjoyed in 1624: in short, where there was only one religious worship in 1624, and now there were to be two, it cannot be said that, in this case, the observance of the year 1624 was adopted as a rule. Not to mention how little it could be expected, that the Protestants would not be deprived of any of their rights, in case their country devolved to a Catholic Sovereign, when the subjects, who happened to be of the same persuasion, would always endeavour to make the most of his protection and favour; and they were taught, but too soon, by a fatal experience, that in such cases, not only their churches were claimed, but even their estates, as well as a participation of all the ecclesiastical revenues and parochial dues. Some authors indeed, since that period, have made a distinction between a prejudicial *Simultaneum*, and an unprejudicial one, and speciously pretend only to defend the latter: but experience, which is the best teacher, has proved that an unprejudicial *Simultaneum* could not be expected upon Catholic principles; and, what is still more to the purpose, according to the line drawn by the definitive year, which has been once established as a rule, no *Simultaneum* can exist.

One grand consideration, which ought not to be omitted when the relation between the Catholics and Protestants comes in question, depends upon the false representation which has been dispersed, and maintained by the Jesuits in particular, as if the Protestant religion was in the same situation with respect

to

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to the Catholic, as a foreigner who is newly received in a country, and who can only claim the indulgence granted him in the narroweſt ſenſe; while thoſe, on the contrary, who receive him, have this preſumption in their favour, that whatever they were formerly in poſſeſſion of, which had not been expreſsly granted to the foreigner, might always legally be taken from him, and reclaimed for themſelves (*a*). This compariſon could at the beſt only be admitted, if a Catholic ſtate, ſuch as Spain for inſtance, had received a certain number of Proteſtants as coloniſts from another country, upon certain conditions. But how can ſuch a compariſon as this be at all applied to the Proteſtant ſtates and countries of Germany, the native inhabitants and ſubjects of which were not received as foreigners, but changed their religion, upon a different view of things, with the conſent of their government? As long as ſuch a repreſentation and ſuch an opinion as this prevailed, Proteſtants, who had Catholic Sovereigns, could entertain but little hope of enjoying the poſſeſſion of their religion, in the ſtate it was in the year 1624, unmoleſted.

Even before the peace of Weſtphalia ſeveral caſes had already occurred, where theſe ſentiments were ſufficiently evident. In the Biſhoprick of Hildeſheim, the greateſt part of which had been in the poſſeſſion of the Houſe of Brunſwick ever ſince the year 1523, the Proteſtant religion was almoſt univerſally eſtabliſhed.

 In

(*a*) Vol. I. p. 461.

BOOK VIII. In the year 1643, Duke Christian Lewis was under the necessity of ceding the great Bishoprick, as it is called, or the greatest part of the country which had hitherto been in the possession of the House of Brunswick, to Ferdinand, who was then Elector of Cologne, and at the same time Bishop of Hildesheim. This cession was in consequence of a convention concluded at Brunswick, April 27, 1643 (*a*). On this occasion an additional agreement was made on the same day, respecting the religion of the country, by virtue of which the Protestant Nobility were allowed the exercise of their public worship for the term of seventy years, and the other subjects for forty; at the same time the Elector, as Bishop of Hildesheim, and his successors, were allowed to establish the public exercise of the Catholic religion throughout the country: so that, in a place where there were two churches, one was left to the Catholics; and where there was only one church, both parties were allowed to have their public worship there at different hours: that for this end, therefore, the confessionals, pulpit, bells, keys of the church, and burying-ground, should be common to the Catholics and Protestants (*b*).

As this Convention of Hildesheim was totally contrary to the spirit of the succeeding Peace of Westphalia, which ordained, that the year 1624 should be observed as a definitive epoch, and one of its articles declared

(*a*) Lunig's Archives of the Empire, Part. Special. Vol. I. p. 523.

(*b*) Ibid. p. 537, 540.

declared all ſtipulations contrary to this as null and void, it could not ſubſiſt any longer. The Catholics took all poſſible pains, during the negociation of peace, to ſave the Convention from being annulled, by an expreſs exception; but their endeavours did not ſucceed. On the contrary, a clauſe was expreſsly added to the article mentioned above (*a*), that the Convention, concluded in the year 1643, reſpecting the ſtate of religion in the Biſhoprick of Hildeſheim, ſhould be conſidered as null and void; and that nine convents only ſhould be excepted, which were to continue in the poſſeſſion of the Catholics, without regard to the year 1624 *.

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The *Simultaneum* could not be more explicitly deſcribed. If it had not been contrary to the deſign of the Peace therefore, there would have been no more difficulty in reſerving the *Simultaneum* here, at leaſt, than in making the exception for the nine convents in the Convention, which the Peace annulled. But as this was

(*a*) Peace of Oſnabruck, Art. 5. § 33.

* One of theſe is the monaſtery of Lampſpringe, which was formerly a Nunnery, but granted by the Elector of Cologne as a retreat for Engliſh Benedictines, in the reign of Henry VIII, about twenty miles from Hanover, and five from Hildeſheim. The Monks are twenty-four in number, and at preſent are chiefly from the county of Lancaſter. The Abbot has the title of Lord, and has the juriſdiction of the adjacent town; and, what is worthy of remark, is patron of the Lutheran church, the paſtor of which often dines at his table. The preſent Abbot is a learned and liberal man. There is a ſeminary here, where there are ſeveral young Engliſhmen, who, after a year's probation, are at liberty to enter into the order, or return to their native country.

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was not done, it affords an additional proof that a *Simultaneum*, which is contrary to the ftate of religion, as it was in the different places in the year 1624, is abfolutely incompatible with the treaty of Weftphalia; and yet the Bifhoprick of Hildefheim was one of the firft places where this matter became again the object of contention; for a convent of Capuchins at Hildefheim, which they were not in poffeffion of in the year 1624, was upon the point of being ceded, and reftored to them; and on this account the affair was difcuffed at the Diet, in 1653.

The relation already mentioned between the Catholics and Proteftants, produced another cafe, of a fimilar nature, between Palatine-Neuburg and Palatine-Sulzbach (*a*). The Count Palatine of Neuburg, in his zeal for a counter-reformation, iffued an order on the 17th of July, 1628, " That all minifters of churches and " fchools, who would not embrace the Catholic reli- " gion, fhould quit the country within three weeks, " and all perfons in office in fix months, without be- " ing allowed during that time to attend any Luthe- " ran worfhip (*b*)." When this order afterwards loft its force by virtue of the rule of the definitive year ordained by the peace of Weftphalia, Palatine-Neuburg endeavoured to introduce at leaft a *Simultaneum* in the country of Palatine-Sulzbach. This was the occafion that the Envoy from Bamberg firft made ufe of the word *Simultaneum* at the negociations for the execution of the peace, Auguft 3, 1650, and endeavoured

to

(*a*) Page 37.

(*b*) STRUVE's Ecclefiaftical Hiftory of the Palatinate, p. 562.

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to defend it. The Proteſtants, however, immediately aſked in reply, If any body would chuſe to continue in a houſe which another inſiſted upon the half of (*a*)? The Aulic Council likewiſe, though it happened at that time to conſiſt wholly of Catholic members, was of opinion, that this *Simultaneum* of Sulzbach could not be defended (*b*). In the mean time the affair took quite a different turn; for Chriſtian Lewis, Count Palatine of Sulzbach, who ſucceeded his father Auguſtus in 1632, embraced the Catholic religion himſelf December 30th, 1655 (*c*).

Another caſe occurred at Höxter, a town on the river Weſer, in the territory of the Abbey of Corvey; the juriſdiction of which is veſted in the Houſe of Brunſwick*, as its patron or protector. In the definitive

(*a*) Meier's Tranſactions at the Negociation for the Execution of the Peace, Vol. II. p. 599.

(*b*) Möser on the Territorial Sovereignty in Eccleſiaſtical Countries, p. 616.

(*c*) Struve's Eccleſiaſtical Hiſtory of the Palatinate, p. 628. Koelors Müngbeluſt on the Study of Coins, Vol. I. p. 323.

* The Benedictine Abbey of Corvey was founded by the Emperor Lewis I, and ſo called becauſe the Monks were ſent for from Corbie, in Picardy. They ſettled on the banks of the Weſer in the year 822. In 844, the Emperor Lotharius made a donation of the Iſland of Rugen to the cloiſter; and many other eſtates formerly belonged to it, which have been gradually loſt. The Dukes of Brunſwick obtained the right of protection, or Schutzgerechtigkeit, over it, by way of fief, in 1265; and in 1547 the Abbot Caſpar granted to that high and princely houſe the power of life and death in Höxter, and all its juſt appendages. On the day dedicated to St. Vitus, the tutelar ſaint of the

BOOK VIII. nitive year 1624, there was no other religion there than Protestantism. The Abbot of Corvey introduced

the foundation, June 15th, the Abbot receives the homage of his vassals. A Minister attends from the Elector of Hanover, who holds a fief, inherited from the Counts of Dassel; and as he at the same time represents the protector of the Abbey, is treated with particular distinction, and a great variety of stipulated ceremonies are punctually observed, the neglect of the most trivial of which would occasion a serious remonstrance. Early in the morning the monks of the convents within the Abbot's territory go in procession, with tapers, &c. to visit the different relicks deposited in oratories in the woods, and round the confines of the Abbey. The priests of the different villages, followed by the peasants of the district, with their wives and children dressed in their gayest clothes, with their respective images, which are decorated on the occasion, banners, tapers, &c. singing hymns in honour of the Saint. The burghers of the town of Höxter then march round the Abbey, and salute the Abbot, who is at the same time a Prince of the Empire, by firing in volleys, lowering their colours, &c. At nine o'clock the Prince's state carriage, attended by the proper officers, is sent to bring the Hanoverian Minister from the town. He is received at the gates by the Imperial soldiers in the service of the Abbot, under arms, a certain number of cannon fired, &c. As soon as he arrives, he is conducted by the Hereditary Marshal, whose office is annexed to a particular estate, held as a fief, to the Prince's audience-room, where he delivers his credentials. After this ceremony is over, he partakes of a cold collation, consisting of a certain number of dishes, according to ancient custom, such as so many eels, &c. The Abbot, at the usual hour of service, repairs to the Abbey church, in his robes of state, attended by the canons, officers of his houshold, and distinguished vassals. High mass is then performed with great solemnity. The guards, who are ranged in the body of the church, present their arms, and fall upon their knees, at the elevation of the Host. The Prince is seated on his throne under a canopy, reads the Gospel, and assists in particular

duced a *Simultaneum*; and on this occaſion, March 19, 1651, the principle firſt appeared of the territorial right

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ticular parts of the ſervice. The Hereditary Marſhal and vaſſals perform their reſpective ſervices, by bearing the water for him to waſh, &c. They then make their uſual offerings; the Hanoverian Miniſter, a piece of fine gold, and the others ſilver: and when the Abbot gives the bleſſing, the former holds a ſplendid croſier, adorned with jewels, before him. When the ſervice is concluded, the Prince, attended by his vaſſals, goes in proceſſion round the confines of the cloiſter, which extend about two Engliſh miles. The canopy over him is ſupported by officers in the train of the Miniſter from Hanover, who goes before him bearing the great croſier; other croſiers are born by the hereditary officers, and a ſilver figure of St. Vitus, as large as life, by the monks. During the proceſſion, the Abbot ſtops to give his bleſſing to the produce of the fields; the common people then crowd round the image of St. Vitus, and endeavour to touch it with their hands, and even their handkerchiefs, which they apply to their ſick friends at home, ſuperſtitiouſly ſuppoſing that they have the virtue of healing various diſorders. On the return of the proceſſion, which is uſually about one o'clock, dinner is ſerved up, in the moſt ſplendid ſtyle, to a very numerous company, the vaſſals and hereditary officers performing their proper ſervices. The Abbot and Hanoverian Miniſter during dinner-time are paid equal honours by agreement, to prevent any diſpute concerning precedency. Their ſeats are richly ornamented, and equally elevated above the reſt of the company. The Prince gives the King of England's health, which is drunk in a large goblet. During this ceremony the guards preſent their arms, the cannon are fired, and trumpets ſounded. The Miniſter then returns the compliment, with the ſame honours, to the Prince and Chapter. There are three courſes, between which the company uſually riſe. At five o'clock the Hanoverian Miniſter is conducted back to Höxter in the ſame ſtate, and generally returns to the ball given on the occaſion, in the character of a private gentleman, All ceremonies are diſpenſed with, and the evening ends convivially.

BOOK VIII. right of reformation, forming the general rule, and the definitive year being only an exception (*a*).

Another, and a very singular case, occurred among several Counts of Lövenstein, who had joint possession of the county of Wertheim. One of them, called John Dieterich, who served in the Spanish army, had embraced the Catholic religion in the year 1621, but resided in the Seigniory of Rochefort, in the Low Countries, till the year 1631: he afterwards came to Wertheim, and attempted to introduce the Catholic *Simultaneum* in that country, against the will of his relations and co-regents, who contested his right.

But all these cases were but an inconsiderable prelude to the attempts afterwards made in conformity to this erroneous principle, and evidently discovered the measures which were gradually adopted, though with great circumspection perhaps, to accomplish the grand design. Notwithstanding the case of Hildesheim was a sufficient proof that this principle was encouraged by the Catholics, even before the Congress of Peace was opened at Munster and Osnabruck; yet, during the negociations, not a word was said upon the subject. In all probability they were silent then, that the Peace might not expressly ordain the reverse. At the negociations for the execution of the Peace, an attempt was first made to interpret the expressions of the Peace in favour of the *Simultaneum*. At the Diet of

(*a*) Möser on the Territorial Sovereignty in Ecclesiastical Countries, p. 619.

of 1653, ſome queſtions were propoſed upon the ſubject in a ſort of problematical manner (*a*). Theſe were referred for examination to the next Aſſembly of Deputations, together with every thing elſe which remained undecided reſpecting the reſtitutions, on account of the amneſty and grievances. CHAP. VIII.

(*a*) Four queſtions were propoſed by the Directors of the two ſuperior Colleges, which were eſſentially as follow. 1. Whether, in Imperial cities of the mixed religion, either of the two parties were at liberty to erect churches, ſchools, convents, &c. though they did not exiſt before the year 1624, provided it was done at their own expence, and without diminiſhing the common revenues of the city, or being prejudicial to other religious foundations? 2. Whether a Sovereign of a country might eſtabliſh the exerciſe of his own religion in vacant and deſerted churches, in a provincial town, provided the exerciſe of the other religion, as it was in 1624, did not ſuffer any injury? 3. Whether a Sovereign could do the ſame in a country where he held the government jointly with another of a different religion? 4. Whether a Proteſtant State ought not to reſtore the revenues of a convent belonging to another country, which he ſuppreſſed in his own land in the year 1624?

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CHAPTER IX.

Collegiate Deliberations of the Protestants continued.

The Elector of Saxony acquires the direction again in the deliberations of the Protestant States, concerning the Simultaneum, and other religious grievances—Thus the Protestant body acquired its present constitution; for which purpose the Peace of Westphalia firmly established the right of acting as a body, as much as every Circle of the Empire constitutes a body—The word *Corpus* first objected to in modern times; but the Protestants have great reason strenuously to adhere to it.

ANOTHER affair of great importance, connected with the questions discussed respecting the Simultaneum, related to the manner in which the Protestant party, or, as the expression now gradually came into use, the Body of the Protestant States (*Corpus Evangelicorum*), renewed their deliberations at this Diet, under a Director appointed by themselves.

Soon after the commencement of this Diet, when the Protestant States observed that several of those who were of the same persuasion laboured under grievances, contrary to the peace of Westphalia, and that disputes arose concerning the interpretation of several passages contained in the treaty, and received advice that the Catholics were agreed among them-

selves,

ſelves, they thought it neceſſary to enter into a delibe- ration in their turn, to prevent the loſs of what they had ſo lately acquired by the peace. With this intent, therefore, they applied to the Elector of Saxony, as that State in former times had been particularly zealous in the Proteſtant cauſe, to take upon him the direction in the Proteſtant conferences; which, in caſe he ſhould ſcruple to comply with, was in the mean time to be transferred to the Envoy from Magdeburg (*a*).

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At the time of the Schmalkaldic League, the Elector of Saxony, who was then the firſt Ptoteſtant State, had the direction in all the Proteſtant deliberations: but at the time when the union of the Proteſtants was formed, before the war of thirty years, the Elector Palatine, who was ſuperior in rank to Saxony, procured the office as head of the Union, from which that Elector withdrew himſelf. Afterwards, not only in the time of Guſtavus Adolphus, during the war of thirty years, but at the negociations of the Peace of Weſtphalia, almoſt the whole care of the Proteſtant affairs fell upon the Crown of Sweden. The Elector of Saxony was now, however, the firſt Proteſtant State again, and was very juſtly therefore appointed, as formerly, the director of all the Proteſtant deliberations.

(*a*) Meier's Tranſactions of the Diet at Ratiſbon, Vol. I. p. 232, &c.

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The ſubjects of theſe deliberations continually increaſed. It often happened that one religious party had to declare their opinion to the other, and that both parties therefore negociated with each other, like two individuals; ſo that it was neceſſary for each firſt to deliberate, and come to a reſolution among themſelves. All this had already been done at the commencement of the religious diviſion, and was perfectly conſiſtent with the original freedom of the States, who had always a right of entering into deliberations, and making reſolutions, according to their particular circumſtances; ſince the Conſtitutional Meetings of the Electors, Aſſemblies of the Imperial Cities, Colleges of the Counts, and even the Diets of the Circle, were indebted to this right for their origin.

At firſt, indeed, there was a hope that the two religious parties might perhaps be re-united; and that their diviſion, therefore, would not be of any long duration. It was in ſome meaſure a matter of diſpute, whether ſuch a diviſion of the two religious parties could take place, how far it could take place, and what would be its legal effects. But as the treaty of Weſtphalia had now laid it down as a perpetual rule, that one party ſhould be conſidered equal to the other; that neither ſhould gain the advantage through a majority of votes; and that in caſe of any infringement of the peace, the whole party ſhould have a right to make the injury of an individual a common cauſe, and aſſiſt

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assist him not only with their advice, but united force; no further objection could be made to the union of all the States who were of the same religion. It had long been evident, that an union of the two religions was not to be expected; and therefore that the regulations which both parties made, respecting their separate deliberations and future resolutions, would be equally durable as the constitution of the different Circles, each of which in the same manner formed a separate and permanent body.

As little, therefore, as objections could be made to the whole body of the States being dismembered, and forming ten distinct bodies, according to the situation of their countries in the respective Circles, so little could they be made now to a separation of the two religious parties, and to each of them forming a distinct body: and thus the very suitable expression, "the Body of the Protestant, and the Body of the "Catholic States, and that both parties treat with each "other *de corpore ad corpus*," gradually arose, and came afterwards into general use. Even the Catholics themselves (*a*) made no scruple at first of using the word

(*a*) Several instances occur of this in various State Papers, as in the declaration respecting the clause in the Peace of Ryswick, September 29, 1709.—FABER's State Chancery, Vol. XV. p. 156. Again, in the Declaration of the Imperial Administration, signed at Cologne, March 4, 1711, respecting the restitution of the Calvinistical Church at Oedenkirchen.—FABER's State Chancery, Vol. XVII. p. 46. Again, the same expression

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word *corpus* for their own party, as well as for that of the Proteſtants (*a*).

In ſucceeding times, ſome may have thought perhaps that they could accompliſh their deſigns with leſs difficulty, if they had to deal with the Proteſtant States individually, and if they did their utmoſt to reſtrict as much as poſſible, or wholly to prevent, their union. Thoſe who were of this opinion, began afterwards

ſion was made uſe of, October 13, 1719, in the name of the Elector of Mentz.—FABER's State Chancery, Vol. XXXV. p. 369. See likewiſe the Tranſactions at the Conferences of the Catholic Party of Religion, ann. 1703 & 1729, in the ſame work. Vol. IX. p. 51, 55. Vol. LIII. p. 236, 247.

(*a*) Thus, at the Diet in 1598, the Directorial Envoy of Auſtria firſt made uſe of the following expreſſion: "He could not "forbear remarking, in the name of his Imperial Majeſty, that "there was a diſtinction to be obſerved with reſpect to the affairs "which came before them; for thoſe affairs which were matters "of conſcience were to be determined by the religious Peace, and "treated of not like other concerns, but in *ſeparate* Councils; "ſo that the Catholics ſhould form one ſeparate Council, and "the other party another."—SCHAUROTH's Collection, Vol. II. p. 793. And 2dly, in the year 1700, in the treaty acknowledging the Crown of the King of Pruſſia, the Emperor Leopold promiſed to ſee that the religious complaints were properly inquired into, as ſoon as they were dutifully ſubmitted to him, *Corpore Auguſtanæ Confeſſionis*.—SCHAUROTH, p. 823. A ſimilar expreſſion occurs in the Declaration of the Elector of Mentz, Oct. 13, 1719.—FABER's State Chancery, Vol. XXXV. p. 366. And ſeveral other ſimilar paſſages are collected in EM. LUD. POSSELT. *Syſtemate Jurium Corporis Evangelici*. Kehl. 1786. p. 50. ſeq.

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afterwards not only to abstain from using the expression, "Body of the two religious parties;" but when the Protestants continued to use the term as before, they made a point of protesting against it; or else, when the word was made use of, it was called "the "assumed title for the so-denominated *body*". This was a circumstance to which the Protestants very naturally could not be indifferent. In a remonstrance made upon the subject, to the Emperor Charles VI, Nov. 16, 1720, the Protestants, with the most rational and cogent arguments, declared, that, as to the mere name, it was a matter of indifference to them whether the Protestant States assembled were called a Body, a Religious Party, or a Community, &c. but when the chief design appeared to be the destruction of the thing itself, with the name, and tended to undermine their united deliberations and conjunctive rights, which they had once purchased so dearly by the treaty of Westphalia, it then became a matter of great importance (*a*).

The sequel of this history but too frequently teaches us, how great reason the Protestants have to keep together as a body. On the Catholic side this is certainly not altogether so necessary, because in the deliberations at the Diet they have generally a majority of votes; and in the cases of individuals, where the difference of religion has any influence, a Pro-

(*a*) SCHAUROTH's Collection of the Decrees of the Protestant Body, Vol. II. p. 759, 791, &c.

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testant is generally the loser; and such is the difference of the principles of the two religions, that Protestants, so far from being zealous in endeavouring to bring others over to their party, or persecuting those who are of a different persuasion, willingly leave every one to his liberty of conscience; while the practice of the Catholics, at least according to the Popish and Jesuitical systems, has been hitherto quite the reverse.

The Catholic States, therefore, might more easily have preserved their rights without acting as a body, as they had neither to engage against a prevailing majority of votes, nor against any grievances imposed upon them by others; and as all the members of the Catholic church are kept together in such a close bond of subjection under one head, and under the clergy in general, as its subordinate officers, that no other connexion is necessary. On the contrary, this was wanting on the side of the Protestants: so that, if the States of that persuasion had not acted collectively, or as a body, the preservation of their freedom, and the rights purchased by the Peace of Westphalia, would have been in the greatest danger of being lost.

It was therefore neither superfluous nor unconstitutional, for the Protestant States to form themselves, at the first Diet after the Peace of Westphalia, immediately into a body, and, thus incorporated, to have their own director and constitution, in order that they might

might always be ready to enter into a regular deliberation, and come to ſuch reſolutions as circumſtances might render neceſſary. The firſt conference on this occaſion was held July 22, 1652, in the houſe of the Ambaſſador from the Elector of Saxony.

CHAPTER X.

Suffrages of the secularized Territories, and some new Princes, settled at the Diet. A new Assembly of Deputations, and Death of the Emperor.

The Protestant Bishopricks allotted a separate cross bench in the Council of the Princes—The secularized countries leave the spiritual, and join the secular opposite bench, as Bremen, Verden, Halberstadt, Minden, Schwerin, Camin, Ratzeburg, Hirschfeld—Certain new Princes allowed a seat and voice at the Diet, but with conditions of great importance to be observed in future; by which the Council of the Princes was at last completed—The collegiate votes of the Counts and Prelates settled as they are at present—End of the general Diet in 1654, and commencement of the Assembly of Deputations.

A VARIETY of things still remained to be settled at this Diet, concerning the suffrages in the College of the Princes; as the vacancies made by the Bishopricks which came into the hands of the Protestants by the Peace of Westphalia, were to be filled up: and the Diet was likewise to take into consideration the admission of some new votes (*a*).

With respect to the Episcopal See of Lubeck, which had now a Protestant Bishop, and the Bishoprick of Osnabruck, which had alternately a Protestant and Catholic

(*a*) Peace of Osnabruck, Art. v. § 22.

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Catholic Bifhop, as well as Prince Auguftus of Saxony, who continued in poffeffion of the Arch-bifhoprick of Magdeburg, in the quality of admini-ftrator, during his life; it was fettled in the Treaty of Weftphalia, that all the Proteftant Ecclefiaftical Princes fhould have their feat upon a particular crofs bench in the College of the Princes, but give their votes in the fame order as formerly.

With refpect to the fecularized Sees, it was only fettled in the Peace, that the State of Bremen fhould take poffeffion of the fifth place on the fecular Bench (*a*), which it ftill enjoys between Palatine-Neuburg and Palatine Deux-Ponts. Afterwards, on the death of Prince Auguftus of Saxony, in 1680, when Magdeburg devolved to the Elector of Bran-denburg, that State procured the fecond place on the fecular bench of Princes; and Bremen, in order to keep the fifth place, as directed by the Peace of Weftphalia, ought in equity to have rifen to the between Palatine-Simmern, and Palatine-Neuburg. This, however, did not take place; fo that the vote of the Dutchy of Bremen, now in the poffeffion of the Houfe of Hanover, is not given in the fifth place of the fecular bench of Princes, as exprefsly ordered by the Peace, but in the fixth.

The Minifter of the King of Sweden, who was then in poffeffion of Verden, contrived that the vote of that place fhould follow immediately after that of

(*a*) Peace of Ofnabruck, Art. x. § 9.

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of Pomerania; and this prerogative, notwithstanding the vote of Pomerania was afterwards, by agreement, made alternative with other votes of the Houses of ancient Princes, has been always preserved without any alteration.

With respect to the other secularized Bishopricks, it was first settled at this Diet in May 1654, that Halberstadt should vote immediately after Brunswick, before the alternative votes; Minden after Saxe-Lauenburg; and Schwerin, Ratzeburg, and Hirschfeld, immediately after Henneberg.

With respect to the new votes which were to have been introduced, Ferdinand III. had already declared at the Diet in 1641, that he had admitted the three new Princes, of Hohenzollern, Eggenberg, and Lobkowitz, to a seat and voice in the College of the Princes; but he was not able at that time to accomplish his design, because it was objected against the two last, by the Electors and Princes, that they were merely subjects of Austria, and were in possession of no lands immediately held of the Empire; and neither contributed to the common necessities of the Empire, as members of a Circle, nor to any Circle itself; without which conditions, no vote could be admitted in the College of Princes (*a*). It was now urged, that these conditions were complied with; upon which the three new Princes above mentioned were admitted into the College, June 30, 1653. In the same manner

(*a*) Recess, 1641, § 97, 98.

ner likewiſe, the Princes of Salm, Dietrichſtein, Piccolomini, and Auerſberg, were each of them admitted with ſeparate votes, February 28, 1654; and the Princes of Naſſau, with two votes, viz. the Catholic branches of Hadamar and Siegen with one, and the Proteſtant branches of Dillenburg and Dietz (*a*) with the other, March 3, 1654; ſo that, all together, nine new Princely votes were admitted at this Diet.

All this was repeated likewiſe in the Receſs of the Empire (*b*); but with this additional reſervation, "that thoſe perſons who were now admitted into the "College of Princes, without having previouſly ful- "filled what was abſolutely requiſite, particularly "by procuring territories immediately held of the "Empire, were admitted for this time only, on ac- "count of their perſonal merit; and that their ad- "miſſion ſhould not by any means tend to the preju- "dice of any one, or be eſtabliſhed as a precedent; "and that the ſeat and voice ſhould not deſcend to "their heirs or ſucceſſors, notwithſtanding they might "in future be provided with ſuch eſtates which were "held immediately of the Empire, and were ſuitable "to the rank of Princes." It was further added, "that for the future, no one ſhould be admitted to "a ſeat and voice in the College of Princes, without "having previouſly actually fulfilled all the indiſpen- "ſable and ſettled conditions, particularly by pro- "curing

(*a*) The family of the preſent Stadtholder in the United Provinces.

(*b*) Receſs, 1654, § 197.

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"curing ſuch lands as were neceſſary, and without "the Electors being previouſly acquainted therewith, "and giving their conſent."

The affair was, in this reſpect, of great importance; becauſe, if new Princes could ſo eaſily procure a ſeat and voice in the College of Princes, the Emperor's Court would ſoon have found ways and means to procure the majority of votes on their ſide at the Diet, and then, through the Imperial decrees, which can only be paſſed by a majority of votes, carry every thing according to their own inclination. The Imperial Court ſeemed to have this in its favour, that in former times, all thoſe whom the Emperor, by his prerogative of granting titles, had raiſed from the rank either of Counts or Prelates to the dignity of Princes, found no difficulty in procuring their princely ſeat and vote to be admitted at the Diet; a cuſtom which may be ſufficiently proved by the inſtances of the Houſes of Savoy, Holſtein, Würtenberg, Henneberg, and even the Houſe of Arenberg, which was firſt raiſed to the Princely dignity in 1576. But in the firſt place, the number of votes in the College of Princes, before the ſixteenth century, was very variable, according to the number of perſons preſent; neither was the diſtinction between the collegiate and perſonal votes perhaps ſo exactly determined as at preſent; or the change of the vote of a Count to that of a Prince, which was done by an elevation of rank, of ſuch conſequence then as now, ſince ſuch an elevation occaſions an

entire

entire new vote; and the number of the princely votes is increafed.

Upon the whole, this circumftance muft have been alarming in the higheft degree; as the Ferdinands were not content, as was formerly the cafe, with raifing only thofe families of Counts of the Empire, who were of very ancient Houfes, and whofe territories were more extenfive than many Principalities, to the Princely dignity, but began to make thofe who were merely noble, and were proprietors of eftates only as fubjects in the hereditary dominions of Auftria, firft Counts, and afterwards Princes. If this had continued, many more of the Auftrian fubjects might gradually have been introduced into the College of the Princes, upon an equality with families which were original States of the Empire: this would evidently have been greatly to the advantage of thofe who wifhed to attribute to the Imperial Court an unlimited power over all Germany; but it was fo inconfiftent with the fpirit of the Germanic conftitution, that it occafioned at laft this privilege of the Emperor's to be limited ftill more than it was before; and it is probable that this circumftance had already had fome influence upon the meafure mentioned above, which was adopted in the year 1582, when the number of votes in the College of the Princes was firft confined to a certain number (*a*).

This limited number of votes was now rendered more even, by all the collegiate votes being finally fixed

(*a*) See page 15.

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fixed at this Diet as we find them at preſent. Before this, all the Prelates had only one collegiate vote; and the Counts of the Empire had only two votes among them all, under the general name of the Counts of Wetteravia and Swabia. The Franconian Counts, however, as they differed in their religious principles from thoſe of Swabia, with whom they were formerly united, could no longer act in conjunction with them; and therefore, at the former Diet in 1640, they procured a collegiate vote for themſelves. After this precedent, the remaining Counts of Weſtphalia acquired a fourth collegiate vote at the preſent Diet; and at laſt the Prelates likewiſe ſucceeded in obtaining two collegiate votes, according to their diviſion into two benches, under the names of the Prelates of Swabia, and Prelates of the Rhine: ſo that at preſent, after the delivery of all the perſonal votes of the eccleſiaſtical and ſecular Princes, there are ſix other collegiate votes, viz. two of the Prelates, and four of the Counts, which alternately change from the ſpiritual to the ſecular bench, and conclude the ſuffrages in the College of the Princes.

After the Diet was finally cloſed by the abovementioned Receſs in May 1654, the ordinary Aſſembly of Deputations, to which the caſes of reſtitution which remained to be put in execution in purſuance of the Treaty of Weſtphalia, were chiefly referred, commenced its ſeſſion at Frankfort on the Maine,

September

September 13, 1655, but without much ſucceſs; and the early death of the Emperor, which happened March 23, 1657, and interregnum which took place in conſequence of this event, changed almoſt the whole ſtate of affairs. CHAP. X.

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BOOK IX.

Sixth Period of Modern Hiſtory.

THE REIGNS OF THE EMPERORS LEOPOLD AND JOSEPH I.

1657—1711.

CHAP. I.

Interregnum, and firſt Years of the Reign of Leopold, particularly the Commencement of the Diet of the Empire, ſince that Time become perpetual, and its Conſtitution. 1657—1670.

Diſpute between the Elector of Bavaria and the Elector Palatine concerning the Vicariate of the Rhine—Violent proceedings occaſioned by it at the meeting of the Electors—Election of Leopold, and his Capitulation—Agreement between the Electors of Mentz and Cologne concerning the right of coronation—Treaties of Peace of the Pyrenees and Oliva—Independence of the Dutchy of Pruſſia—Rheniſh alliance, and other leagues of the States of the Empire—Reduction of the city of Munſter—Commencement of the Diet, which afterwards became perpetual—Appearance of the Diet totally changed, as it now conſiſts merely of Miniſters Plenipotentiary, who are treated as Envoys—The Comitial Envoys from the Electors to the Diet, diſtinguiſhed even as Ambaſſadors, and enjoy many privileges above thoſe of

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of the Princes—This circumſtance occaſions many diſputes—Commiſſaries ſent to the Diet in the Emperor's name; a Prince as principal Commiſſary, and a Con-commiſſary—The former makes the firſt propoſition in the Emperor's name at the opening of the Diet, and afterwards promulgates the commiſſorial decrees—Various diſputes reſpecting ceremonies, which aroſe formerly, and in ſome meaſure ſtill continue at the Diet—Diſputes reſpecting rank—A particular inſtance of this, occaſioned by the ancient cuſtom of drinking healths—Different modes of legitimating the Envoys, by credentials and letters plenipotentiary—The credentials of the Envoys from foreign Powers addreſſed only to the States, or their repreſentatives—Creation of ſome new Princes.

THE interregnum which followed on the death of the Emperor Ferdinand III. occaſioned a violent conteſt for the Rheniſh Vicariate. The Elector of Bavaria pretended that it belonged to him, becauſe in the Peace of Weſtphalia the former Palatine Electorate was transferred to his Houſe, with all the prerogatives annexed to it. In the Palatinate, on the contrary, it was thought, that the Rheniſh Vicariate did not ſo much appertain to the Palatine Electorate, as it was one of the dignities peculiar to a Count Palatine of the Rhine, and therefore could not be included among thoſe prerogatives which were transferred with the Palatine Electoral dignity to the Houſe of Bavaria. When we recollect that one of the moſt eſſential prerogatives of a Vicar of the Empire is the adminiſtration of the ſupreme judiciary power, and that the title of Count Palatine originally denoted the office of a Judge, the Palatinate ſeemed to have arguments

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of no ſmall weight in its favour. When the Palatine Electorate was firſt transferred to the Houſe of Bavaria, which Ferdinand II. effected without a decree of the Empire, the Vicariate was not mentioned among the prerogatives annexed to that dignity; neither was it transferred with it by the Treaty of Weſtphalia. It would be a difficult matter likewiſe to determine what connexion the Vicariate could have with the Electoral dignity. On the other ſide, however, there ſeemed a ſtill greater difficulty to be removed, that the Elector Palatine, who was now the laſt in rank among all the Electors, ſhould enjoy the exerciſe of this important prerogative. The Elector of Bavaria, who had a better opportunity of receiving the firſt intelligence of the death of the Emperor than the Elector Palatine, took immediate poſſeſſion of the office; and as the Elector Palatine was a member of the Calviniſtical Church, all the Catholic party declared in his favour.

This diſpute was the occaſion of a very extraordinary incident at the Emperor's election. Dr. Oexel, the Bavarian Miniſter, read a paper at the meeting of the Electors, in which the expreſſion occurred, that the Elector Palatine had *forfeited* his Electorate; Charles Lewis, the Elector Palatine, who happened to be preſent, reſented the expreſſion on the ſpot, and threw an ink-ſtand at the Doctor's head. The Electoral College had ſome difficulty in bringing matters, on this occaſion, to an amicable accommodation, and ordered that ſuch acts of violence ſhould

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be puniſhed in future with ſuſpenſion of the Electoral vote. CHAP. I.

Every poſſible attempt was made at this election to get the Imperial dignity out of the Houſe of Auſtria. France endeavoured to ſecure it for the Elector of Bavaria, and Sweden for the Count Palatine of Neuburg; but it fell upon Leopold of Auſtria. In the Capitulation, there were many additional articles. One propoſition, however, which was made by the French Ambaſſador, that a clauſe ſhould be inſerted, declaring "that the Emperor ſhould forfeit "his throne, as ſoon as he tranſgreſſed a ſingle article "of the Capitulation," was unſucceſsful. On the other ſide, an affair which had been the ſubject of diſpute for many ages, between the Electors of Mentz and Cologne, concerning the right of crowning the Emperors, was fortunately ſettled June 16, 1657, and an agreement made that each ſhould enjoy the right of performing the ceremony when the coronation was in his own dioceſs; but that otherwiſe they ſhould enjoy the honour alternately.

The two wars which broke out during the former reign, were concluded in the firſt year of the Emperor Leopold, by the Peace of the Pyrenees, and that of Oliva. Neither of them are intereſting to our preſent purpoſe in any other reſpect than as the Treaties had ſome degree of influence upon the Germanic conſtitution. To the Peace of the Pyrenees muſt be attributed the loſs which the Circle of Burgundy

BOOK IX. suffered, of the places in Artois, Flanders, Hainault, and Luxemburg, which were ceded by that treaty to the Crown of France, with all the rights of sovereignty. By the Peace of Oliva, the House of Brandenburg was a considerable gainer; for the independence of the Dutchy of Prussia, obtained by the
A. C. 1657. Treaty of Wehlau September 19, 1657, was fully confirmed.

Before the Peace of Oliva was accomplished, the spiritual Electors, and several spiritual and secular Princes, had entered into a league with each other, August 14, 1658, at Frankfort, in order to prevent the northern war from extending itself to Germany. This RHENISH ALLIANCE, as it was called, was re-
A. C. 1660. newed even after the Peace, August 31, 1660, for three years; and soon afterwards, March 26, 1661, almost the same allies entered into another agreement, to make the preservation of their prerogatives, particularly the right of making alliances, engaging in a war, and concluding peace, a common cause. Thus the right of making alliances, which was considered as a jewel secured by the Treaty of Westphalia, became constantly more in exercise. Bernard Galen, Bishop of Munster, among others, made good use of this prerogative; for with the assistance of Austria and France, he reduced the city of Munster, March 26, 1661, to the most perfect subjection *.

The

* ALPEN, *Vita Bernhardi a Galen*, lib. iv. § 15, 21. LONDORP, Tom. VIII. p. 751. DUMONT, Tom. VI. Part ii. p. 553. STRUV. *Corp. Hist. Germ.* p. 1342.

CHAP. I.

The Aſſembly of Deputations which met at Frankfort towards the concluſion of the laſt reign, continued its ſeſſion after Ferdinand's death; but effected nothing of conſequence. A new war with the Turks, in which Leopold ſaw himſelf involved, rendered it neceſſary for him to convoke a general Diet at Ratiſbon, inſtead of the Aſſembly of Deputations. It certainly was not his intention, by this meaſure, to eſtabliſh a perpetual general Diet; he convoked it with the hope of procuring a ſpeedy and adequate aſſiſtance againſt the Turks; and intended that the ſeſſion ſhould in a few months be again prorogued: but the Princes, who were not pleaſed to ſee the hopes afforded them by the Peace of Weſtphalia, of a perpetual Capitulation at the election of an Emperor and King of the Romans, ſo little accompliſhed, zealouſly inſiſted that it ſhould come into diſcuſſion, either before, or at the ſame time with their deliberations reſpecting the aid againſt the Turks. They had even formed a particular union among themſelves, in ſupport of their prerogatives, April 20, 1662, called the Princely, in imitation of the Electoral Union; and ſo far accompliſhed their purpoſe, that immediately after the aid required by the Emperor againſt the Turks was granted, they began to draw up a perpetual Capitulation. The plan was finiſhed in a few weeks; but a new diſpute aroſe now concerning the introduction and concluſion, as the Electors inſiſted upon reſerving their right of inſerting ſome additions of their own. Beſides this, ſo many other new and important objects

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ſoon afterwards occurred in the courſe of the deliberations, that the Diet was unuſually prolonged, and at laſt rendered perpetual, as it exiſts at preſent, and diſtinguiſhes the Germanic conſtitution as the only one of its kind—not only for a certain length of time, as it was formerly, and as Diets are generally held in other countries, where there are national States; but the Diet of the Germanic Empire was eſtabliſhed by this event for ever.

The Diet acquired by this circumſtance an entirely different form. So long as it was only of ſhort duration, it was always expected that the Emperor himſelf, as well as the Electors, Princes, Counts, and Prelates, if not all, yet the greateſt part of them, ſhould attend in perſon; as in other nations, where there are States, thoſe who enjoy a ſeat and voice at the Diets, or in Parliament, are expected to exerciſe their privilege perſonally. It is true, it had long been cuſtomary at the Diets of Germany, for the States to deliver their votes occaſionally by means of plenipotentiaries; but it was then conſidered only as an exception, whereas it was now eſtabliſhed as a general rule, that all the States ſhould only ſend their plenipotentiaries, and never appear themſelves. If therefore in former times it was neither impoſſible nor unuſual for States who perſonally attended the collegiate deliberations, to judge for themſelves, and if they were able to paſs a decree without further queſtion, according to their own reſolutions, it naturally followed that an aſſembly con-

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ſiſting ſolely of plenipotentiaries, could only deliver their votes as their principals dictated, and that it was neceſſary therefore previouſly to ſubmit the ſubject of debate to their opinion, and receive inſtructions.

The queſtion very naturally aroſe, What ſort of plenipotentiaries thoſe were, which now compoſed the Diet? In former times, they had ſcarcely any determinate name: ſometimes they were called counſellors, and ſometimes deputies, plenipotentiaries, agents, meſſengers, &c. Every Plenipotentiary from a State to the Diet was conſidered as an Ambaſſador, and treated upon that footing. The whole Diet therefore imperceptibly acquired the form of a Congreſs, conſiſting ſolely of Miniſters; ſimilar in a great degree to a Congreſs where ſeveral powers ſend their Envoys to treat of peace. In other reſpects, it may be compared to a Congreſs held in the name of ſeveral States in perpetual alliance with each other, as in Swiſſerland, the United Provinces; and as ſomewhat of a ſimilar nature exiſts at preſent in North America; but with this difference, that in Germany the Aſſembly is held under the authority of one common ſupreme head, and that the members do not appear merely as deputies, or repreſentatives inveſted with full power by their principals, which is only the caſe with the Imperial cities; but ſo that every member of the two ſuperior Colleges of the Empire is himſelf an actual Sovereign of a State, who permits his Miniſter to deliver his

 vote

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vote in his name, and only according to his own prescription.

The Electors have now declared their Comitial Envoys to the Diets, to be actual Ambassadors, or Ministers of the first rank, as much as those who attend the coronation of an Emperor and King of the Romans; so that, in addressing each other, they even use the title of "Excellency," and pay every token of respect due to the Ambassadors of independent Powers, and expect the same from all the others, without returning it to the Envoys sent by the Princes. They enjoyed this precedency at the beginning of the session of the present Diet; so that the Ministers from the Princes paid the first ceremonial visit to the Electoral Ministers without distinction, and honoured them with the title of Excellency, though they did not receive it themselves. The Electoral Envoys, however, were not contented with this distinction, and set no bounds to their ambition of precedency. At public entertainments, for instance, they insisted upon having seats covered with crimson, while the Ministers of the Princes were only to be indulged with green; to be waited upon by pages of honour, and have gold knives and forks, while the others were only to be served by servants in livery, and have knives and forks of silver. At the arrival of a new Electoral Ambassador, the city of Ratisbon was obliged to make the usual present of wine, fruit, and fish, in a greater quantity than to a Minister from one of the Princes. On the first of May it was customary for the

Imperial

Imperial Provoſt to place May boughs at the doors of the houſes of the Miniſters. Thoſe of the Electors inſiſted upon having ſix, and that before the doors of the Miniſters from the Princes there ſhould be only four; with various other diſtinctions. CHAP. I.

A circumſtance which chiefly affected the Envoys of the ancient Princely Houſes was, that the Electoral Miniſters took the upper hand of them even in their own houſes. This at laſt occaſioned the former entirely to break off all public intercourſe with them. They began to treat each other with exactly the ſame ceremony as was obſerved among the Electoral Miniſters, and honoured them with no other title or token of reſpect, than they received in return. In this ſtate the affair has remained in a great meaſure to the preſent day; not to mention the variety of difficulties and diſputes concerning precedency, which ariſe between the Miniſters, or voters, as they are ſometimes called, of the new Princes, Counts, and Imperial Cities, as well as the Envoys of the ſecond rank, who generally attend the Diet (*a*), from foreign Powers.

Another

(*a*) In the year 1611 the Electors reſolved that their Envoys of the firſt rank ſhould receive all others who were only of the ſecond, either in, or at the door of the room, and take the upper hand of them. In another reſolution of November, 1726, they yielded ſo far, that though they expected from the others the firſt viſit, and the title of Excellency, yet they condeſcended to meet them half way down the ſtairs, and attend them ſo far back; but in going, ſtanding, and ſitting, to take the upper hand of them.

On

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Another queftion was, Among what kind of Plenipotentiaries thofe could be reckoned, who occupied the Emperor's office at the Diet? On other occafions, when a Minifter was fent from the Emperor to a German Court, or a Circle, there was no fcruple made to call him an Ambaffador. At the Diet, however, in the reign of Charles V, the expreffion "Commiffary" was made ufe of, as it feemed more fuitable to the relation in which a fuperior power ftood towards thofe who were fubordinate. The Archbifhop of Salzburg, who held this office at the opening of the Diet in 1663, firft applied this expreffion to himfelf, as bearing the principal commiffion from the Emperor. The title of Principal Commiffary, or Firft Commiffioner, which is now in general ufe, was adopted, becaufe another perfon was appointed as agent from the Imperial Court, to co-operate with him, who in former times had the title of Affiftant Counfellor, and appeared now as Co-Plenipotentiary, or, as the expreffion was afterwards ufed in the year 1688, Con-Commiffary.

From this circumftance a cuftom has arifen at the Diet, that one perfon alone is acknowledged as Principal Commiffary, who muft have the rank of Prince. Whether he is a fpiritual or a fecular, of an old or new creation, makes no difference. But no Count can be

On the contrary, when they vifited foreign Envoys of the fecond rank themfelves, they required to be received at the bottom of the ftairs, and to be attended to the door when they returned.— FABER's State Chancery, Vol. XLIX, p. 690.

be admitted to the office; becauſe, even in the ancient laws of the Empire, a paſſage occurs, which ſays, "That the Commiſſioners appointed by his Imperial "Majeſty ſhall be Princes of the Empire (*a*)." For this reaſon a Count of Weiſſenwolf, who was to have had this office in 1668, and a Count of Windiſchgrätz, who was propoſed in 1683, were not admitted. A plan was in agitation at that time to legitimate the latter as Co-principal Repreſentative with the Biſhop of Eichſtadt, then principal Commiſſary; but this was not allowed of, becauſe there can only be one Principal Commiſſary at the Diet.

This officer alone, therefore, is the only one conſidered as entitled formally to repreſent the perſon of the Emperor. At the opening of the Diet, and other public occaſions, he may occupy the ſeat deſigned for the Emperor if he were preſent. The firſt propoſition likewiſe by which the Diet is opened, much in the ſame manner as the Britiſh Parliament is opened by the King's ſpeech from the throne, at London, is read by the Firſt Commiſſary. Whenever the Emperor has any thing to lay before the Empire beſides the grand queſtion, or firſt propoſition, it is done by a decree of the Imperial Court, drawn up at Ratiſbon in the name of the Principal Commiſſary, and ſigned by him. It is then called an Imperial *Commiſſorial Decree*. But if the Principal Commiſſary happens not to be preſent himſelf at Ratiſbon, the Con-commiſſary is not at liberty to affix the ſignature

(*a*) Receſs, 1543, § 17.

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ſignature for him; but the decree is ſent immediately to the Diet from the Imperial Court, ſubſcribed by the Vice-Chancellor of the Empire.

All the ceremonies which are obſerved at the Diet, centre in the Court kept by the Principal Commiſſary, both in his public entertainments and aſſemblies, and in the different degrees of diſtinction which his company obſerve towards each other; and perhaps they are attended to there, in a more punctilious manner than at any other place whatever. At leaſt it would be difficult to find a place where there have been ſo many diſputes reſpecting ceremonies as have ariſen here, and ſtill continue. It was here where the diſtinction between Electoral and Princely Envoys was carried to ſo great a length, in the firſt year of the preſent Diet, that the latter were even to ſit upon green chairs, while the former were indulged with crimſon. At laſt, however, the Princes ſucceeded in having green chairs placed for the company in general. On the firſt day that this new regulation took place, one of the Electoral Miniſters appeared with a ſcarlet mantle, and during dinner-time let it fall over his chair in ſuch a manner, that it had the appearance of a ſeat which was deſignedly covered with red: after this, he informed his Court, that he thought he had by this meaſure reſcued the accuſtomed precedency of the Electoral Ambaſſadors. Another diſtinction of this kind was attempted to be made, by placing the ſeats of the Electoral Ambaſſadors upon the carpet, on which the Principal Commiſſary

miſſary ſat under a canopy. The Miniſters of the Princes had their chairs placed merely upon the boards of the room; till at laſt matters were ſo far accommodated, that they were allowed to place them ſo that the feet at leaſt ſhould touch the fringe.

Beſides all this, there were perpetual diſputes concerning the rank of thoſe who happened to be invited; as between the Miniſters of Eccleſiaſtical and Secular Princes, or between the Electoral Ambaſſadors of the firſt and Foreign Miniſters of the ſecond rank, or between the Envoys to the Diet and the Con-commiſſary; and in like manner between their reſpective ladies: ſo that all the parties preſent were often in the moſt diſagreeable and awkward ſituation. Among other things, great miſunderſtandings aroſe concerning the order of drinking the cuſtomary healths at table. The Imperial Court, in the year 1679, even complained to ſome of the Electoral Courts, that their Ambaſſadors would not allow the health of the Houſes of Auſtria and Burgundy, and the Principal Commiſſary, to be drunk immediately after the Emperor and Empreſs, before the turn came to the Electors, and the College of the Princes (*a*). This circumſtance, as well as a variety

(*a*) A Treatiſe was written on this ſubject, in which the following pertinent remark occurs: " One may judge from this diſpute " concerning drinking healths, what a quantity of wine muſt have " been drunk in thoſe days at the table of the Principal Com- " miſſary. Firſt, they were to drink the health of the Emperor, " the Empreſs, the Electors in a body, then thoſe in particular " whoſe Envoys were preſent, the whole Council of the Princes, " the Principal and Con-commiſſaries, the Electoral and Princely " Envoys;

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variety of others, has been altered by the introduction of modern manners; but all the disputes of this kind are even now very far from being entirely abolished.

Every new Principal Commissary must be legitimated by credentials, and a letter plenipotentiary, subscribed by the Emperor, which must be open; the first must be sealed, and addressed to all the Ministers of the States, and communicated by the Elector of Mentz *per dictaturam* *. The letter plenipotentiary is only placed by the Electoral Ambassador of Mentz among the other writings in the archives. The Con-commissary brings only letters credential from the Emperor, and no letter plenipotentiary. The letters plenipotentiary of the Ambassador of Mentz, on the contrary, are made public by the Principal Commissary, by a commissiorial decree of the whole Assembly. All the other Envoys show their letters plenipotentiary to the Ambassador of Mentz, of which each College at its first session is advised by its Directorial Minister. Besides this, some have particular credentials for the Principal Commissary; but this is not a matter of necessity, for the

"Envoys; besides many other glasses on the subject of war or "peace, or other topic of the day. The glasses, moreover, ac-"cording to the good custom of those days, were far from being "small; neither were any of the company at liberty to fill as "they pleased."

* That is, the Secretary of the Director of the Diet reads the public papers to the officers of the Chancery, to be copied by them, which copies are delivered to the Envoys. The expression is peculiar to the Diet, and is best explained perhaps by the Latin word *perscribere*.

the Principal Commiſſary muſt acknowledge every Envoy to the Diet who is legitimated in the manner above mentioned, of courſe. CHAP. I.

It may be ſometimes neceſſary likewiſe for the Miniſters from foreign Powers to be provided with letters plenipotentiary, as they are called, when they are commiſſioned to conclude any obligatory ſtipulation with the Diet. Otherwiſe, they generally bring their credentials only to the whole body of the States, or their Envoys, and not to the perſon of the Emperor, or his Principal Commiſſary. This is a circumſtance peculiar to the Germanic conſtitution; for we meet with no other inſtance of an embaſſy ſent to an Aſſembly of States, diſtinct from the perſon of its Monarch. And here again every foreign Miniſter at his departure receives his re-credentials, in the name of all the States aſſembled.

The buſineſs which occurred at the Diet in the firſt years of Leopold's reign, beſides the negociations reſpecting the perpetual capitulation at elections, conſiſted chiefly in caſual affairs, which are unworthy of notice. The number of perſonal votes of the Princes indeed was increaſed, by the introduction of ſome new Princes, which was allowed in compliment to the Emperor. Thus Leopold had raiſed John Ferdinand, Count of Portia, his Miniſter of State, to the dignity of Prince, who was introduced into the Princely College April 26, 1664; upon which Eaſt Frieſeland and Furſtenberg were introduced September 6, 1667, and Schwarzenberg and Waldeck Auguſt 22, 1674.

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CHAPTER II.

Affairs of the Empire in the Years 1670 and 1672, particularly concerning the Extension of the Right of Taxation to certain Cities which were deprived of their Freedom, and the Establishment of a perpetual Military Force, or Standing Army, which originated at this Period in Germany.

Ordinances in favour of the States, respecting taxation in their own territories, which was extended to defray the expences of sending Envoys to the Diet—Continuation of the Diet thereby promoted, though in the end the number of Envoys was diminished—Further extension of the provincial taxes required, which was refused by the Emperor, in order to secure many countries from the effects of despotic power—Those alone allowed, which custom had constitutionally established, and which the countries required for their defence—In many countries a Ladies tax, as it was called, was common; as well as other contributions, to complete the deficiences of the salaries at the Chamber—The principle moreover very justly continued, that no State of the Empire should tax his subjects without their consent—Excise introduced in several countries, with the consent of the Provincial States—Many cities at this period unfortunately lose their former freedom; as Erfurt, Magdeburg, and Brunswick—The cities of Bremen and Cologne save themselves—Convention between the Elector of Brandenburg and Palatine-Neuburg, concerning the succession to Juliers; though neither the presentation of the Circle of Westphalia to the Chamber was re-established, nor the vote of Juliers to the Diet—Introduction of a standing military establishment, in the principal States of Germany.

A.C. 1670. ONE of the most important affairs discussed at the Diet, related to taxation in the countries belonging

belonging to the States of the Empire. An article had been already inserted on this subject, in the Emperor's Capitulation; by virtue of which, the contributions imposed in the last Recess, upon the Provincial States and subjects, for the support of the necessary fortifications and garrisons, as well as the Imperial Chamber, were continued; but the States were not allowed to appropriate the disposal of the monies so levied exclusively to themselves, without consulting their Sovereign; or to hold any convention on affairs of this nature, or any other, without his knowledge and approbation (*a*).

CHAP. II.

It was proposed in a resolution of the Empire, Jan. 26, 1667, that every State should be allowed to impose a tax upon his subjects likewise, to defray the necessary expence of sending a legation to the general Diet, the Assemblies of Deputations, and Diets of the Circles (*b*); which was confirmed by the Emperor, June 19, 1670 (*c*). This circumstance considerably lessened the difficulty of continuing the general Diet; since there was no further necessity for a State to defray the charges of the embassy from his own revenues, but he was at liberty to impose a tax for that purpose upon his subjects. Many of the States, since

(*a*) Capitulation, Art. xv. § 3.

(*b*) Pachner von Eggenstorf, Collection of the Decrees of the Empire, Vol. I. p. 261, 377, 405.

(*c*) Pachner, p. 451. — Schmauss. *Corp. Jur. Pub.* p. 1076.

that time, have found this act perhaps not a little advantageous; because something may always be spared from the produce of the tax: at least, many of the Courts, which, if they had a vote in both the Superior Colleges, formerly sent an Envoy for each, and, if they were Electors, sent several Ministers at once, now sent only one for both. It is very common at present likewise, for one Envoy to deliver the votes of several States, because he can certainly serve those who entrust him with their votes, at a much cheaper rate, in proportion to the number of his commissions. This, among other circumstances, sufficiently accounts for the number of the Envoys being so much decreased: so that a few Senators of the city of Ratisbon have even been appointed to deliver the votes of most of the Imperial cities.

Many of the States wished the above-mentioned article of the last Recess, to have been still further extended; and even "that the Provincial States, "and subjects of every State of the Empire, should "be under an obligation to submit to the impost, "and not refuse to contribute, not only to the "necessary defence of the country, but likewise to "the forming and maintaining of such alliances as "were consistent with the Treaty of Westphalia, as "well as for the preservation and garrisoning not "only the necessary fortresses and garrisons in ge- "neral,

(a) Recess, 1654, § 180. See p. 238.

" neral, but without any reſtriction whatever; and " likewiſe for the maintenance of the troops, and " other requiſites; and that they ſhould conſtantly " afford their Prince, governors, and ſuperiors, all " the neceſſary means, and of courſe whatever they " were, and as often as they were required." It was ordered likewiſe, that no complaints from the ſubject againſt ſuch impoſts, ſhould be heard at the Imperial tribunals, nor any privilege or exemption from them be of any avail whatever.

Agreeably to this, an opinion of the Empire was procured by a majority of votes, October 29, 1670 (*a*); but the Emperor refuſed his approbation in February, 1671, and declared moreover, " that he held " himſelf engaged to leave every one in poſſeſſion of " thoſe rights which he was entitled to enjoy, and " which cuſtom had eſtabliſhed." (*b*). This laudable declaration of the Emperor's, has ſince that period reſcued many a country from exceſſive impoſts and the effects of deſpotic power in general. It is at the ſame time an admirable inſtance of the advantages of the Germanic conſtitution: for, although decrees of the Empire, in favour of the territorial Sovereignty, have their legal effect; yet, when this is the object, there is no ſmall difficulty in procuring a majority of votes; and when even a majority is procured, the Emperor, by refuſing his aſſent,

(*a*) PACHNER, p. 495.

(*b*) PACHNER, p. 518, &c.—SCHMAUSS. p. 1077, &c.

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may rescue and protect the freedom of the country, which it will certainly always be his greatest interest to do.

The only thing which Leopold consented to, in February, 1671, was, that those States which legally enjoyed, by custom, more than was contained in the last Recess, should be protected against their subjects and vassals (*a*). That the subjects likewise should be further directed to contribute, for the public security, whatever was ordered by the Empire, and which was the natural consequence of the statute of execution, as well as what was required for the defence of the country against every attack, infringement of custom, and in all cases of necessity (*b*).

The clause which mentions the customs established in the different countries, comprehends a certain species and number of taxes, which had been already introduced; such as general contributions to the expence of supporting the Chamber. In most countries likewise it was customary, when a daughter of the reigning House was married suitably to her rank, for the provinces to advance a certain sum of money, for her marriage-portion, or dowry, under the name of the

(*a*) UNTERTHANEN und LANDSASSEN. The distinction between these is, that the latter hold large estates, as fiefs of the Sovereign: they are his vassals as well as subjects; and have a right of levying taxes upon the UNTERTHANEN, or subjects under them.

(*b*) PACHNER, p. 519.—SCHMAUSS, p. 1078.

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the FRÄULEINSTEUR (Young Ladies' tax). Many of the States however ſuffered no opportunity to eſcape them, of demanding a contribution of money from their ſubjects, as often as any extraordinary expence of any importance occurred; ſuch as for the better proviſion of younger ſons, elevation of rank, travelling, frequenting mineral waters for their health, &c. This was carried ſo far that, when a Count of the Empire happened once to break his leg, a broken-leg tax, as it was called, which was granted on that account, was afterwards paid for many years.

Though it is certainly very equitable that every one ſhould contribute, in proportion to his circumſtances, to inſtitutions which tend to promote the public welfare, of which every one equally partakes; and, trifling as it ſeems, when a tax is levied by the contribution of a farthing or two from every ſubject, though conſiderable ſums are by this means raiſed from a whole country; yet it is ſtill a matter of great importance, when once the way is opened, for taxes to be paid at the requiſition of the Sovereign, from the repetition of which there is no ſecurity in future: if this were allowed, there is the greateſt danger likewiſe of deviating from the firſt object of government, which ought to be the ſecurity of the property of every individual; but if I am ſubject to the unlimited demands of my Sovereign, whenever he is diſpoſed to impoſe a tax upon his people, I am robbed of that ſecurity, which is in fact the grand motive for ſacri-

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ficing our natural liberty in civil ſociety. Nothing therefore could be more equitable than that, beſides the taxes which had been once allowed and approved of, either by a general law of the Empire, or a particular fundamental law of the reſpective countries, no State ſhould have a right of impoſing a tax upon his ſubjects without their own conſent.

Among the various ſpecies of taxes, an experiment had formerly been made, to lay certain taxes upon liquors, and other neceſſary commodities, under the name of a TRANKSTEUER, or exciſe, and LICENT *: but an experiment was now firſt made by M. de Grumbkow, the miniſter of finance in the country of Brandenburg, in 1677, inſtead of levying the taxes, as formerly, upon the arable lands or cattle, and impoſing a hardſhip upon induſtrious tradeſmen, to raiſe the principal tax by a duty or exciſe upon articles of general conſumption. This was imitated in ſeveral countries, as in the Electorate of Brunſwick, in 1686. If the Provincial States granted their conſent, there could be no objection to it: but no Sovereign can introduce a tax of this nature, by virtue of his own territorial power, any more than the ſtamped paper (an invention we may thank the Dutch for), can be legally introduced without the conſent of the Provincial States.

During the time that the attention of the Emperor and Empire were fixed upon the various objects mentioned above, ſeveral cities, which had hitherto preſerved

* A duty paid by the purchaſer.

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ferved a kind of independency, met with a fimilar fate to that of Munfter (*a*). One of the moft remarkable inftances of this kind, was the city of Erfurt, which had been hitherto under the protection of Saxony, but was claimed by the Elector of Mentz; and after having been put to the ban of the Empire, by the Emperor, September 17, 1664, was reduced, with the affiftance of a French army, October 5, the fame year, to acknowledge its fubmiffion to the Elector's fovereignty, with the refervation of a few privileges, particularly refpecting religion.

The city of Magdeburg appealed to its ancient privileges, which were confirmed by the Treaty of Weftphalia; and would not acknowledge the territorial power of the Prince who was then adminiftrator. The inhabitants were obliged however, on the 29th of May, 1666, to fubfcribe to a convention, and do homage, not only to the adminiftrator, but even to the Houfe of Brandenburg, which fucceeded upon his demife.

The Houfe of Brunfwick was at laft equally fuccefsful with the city of that name, which, after a fiege carried on under the command of George Frederick, Count of Waldeck, was obliged, June 12, 1671, to receive a ducal garrifon, and do homage to its Sovereign.

The city of Bremen was befieged in the fame manner by a Swedifh army; but, by an agreement

(*a*) See page 276.

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entered into with the King of Sweden, November 15, 1666, obtained the possession of its immediacy; and the Imperial city of Cologne was fortunately saved, by the support of Holland, from the attack which was threatened by the Elector of Cologne, in conjunction with the French, in 1670.

The affair of the succession of Juliers, which was left undetermined by the Peace of Westphalia, and had already occasioned the hostilities which broke out, and threatened the most fatal consequences, in the year 1651, was at last compromised by a convention between the Elector of Brandenburg and Palatine House of Neuburg, Sept. 9, 1666. It was agreed that the possession of those territories should be divided, but their former common rights continue; that the Elector of Brandenburg should have the Dutchy of Cleve, and the Counties of the Mark and Ravensberg, and that Palatine-Neuburg should possess the Dutchies of Juliers and Berg, with the Seigniories of Winnendal and Breskesand; that the succession of Ravenstein should be settled by compromise, and the joint direction of the Circle of Westphalia, be alternately enjoyed by both Houses, one day after the other.

In all these agreements, the presentation from the Circle of Westphalia to the Imperial Chamber still remained unsettled; that office, therefore, has always continued vacant. This was the only instance of a Princely House becoming extinct after the year 1582, and

and the vote annexed to the country being disconti-nued in the College of the Princes; a circumstance which certainly might never have happened, if the two Houses of Brandenburg and the Palatinate had agreed upon the subject, and there had been no apprehension of opposition from the pretensions of another quarter: but so the fact is, that the vote has been dormant ever since.

All these events were gradually productive of the most important change in the constitution of Germany, as many of the most powerful States began now to maintain a permanent military establishment, or standing army.

George William, the Elector of Brandenburg, had only twelve companies in the garrisons of Berlin, Spandau, Cüstrin, and Colberg. His son and successor, Frederick William, before the year 1665, had two regiments of infantry, and raised another at Ratisbon, Nurenberg, and Frankfort, in 1665. In the year 1666, he raised another regiment of cuirassiers, and annually continued increasing his troops, till at the end of his reign, in 1688, he left a standing A. C. 1688. army consisting of thirty-five batalions of infantry, each of them formed of four companies, of 150 men; three hundred artillery-men, thirty-two squadrons of cuirassiers, eight squadrons of dragoons, and eighteen garrison-companies; all together, 28,500 men (*a*).

The

(*a*) Origin and Progress of the Prussian Army. Frankfort and Leipsic, 1756. p. 1—59, 116.

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The accounts of the ſtanding army of the Houſe of Auſtria, are moſtly of ſo late a date as the year 1683; becauſe, before that time, the regiments, raiſed in time of war, were immediately diſbanded on the conclusion of peace. The moſt ancient regiment of infantry ſtill exiſting, was raiſed in 1681, by Erneſt Rüdiger, Count of Stahrenberg, who was afterwards famed for his defence of the city of Vienna, againſt the Turks, in 1683. In the year 1683, fifteen regiments were raiſed at once, which are all of them ſtill exiſting. After this, two others were raiſed in 1684; in 1685, one; 1689, one; 1691, one; 1698, one; 1701, two; 1702, two; 1703, one; 1704, one; 1706, one; 1709, one; 1710, one; 1713, one; 1715, two; 1716, one; 1717, one; 1718, one; 1721, one; 1725, two; 1734, five; 1742, ſeven; 1744, one; 1745, one, &c. The oldeſt Auſtrian regiment of cuiraſſiers was raiſed in 1680; another, in 1682. In the year 1683, eleven were raiſed at once; in 1684, one; 1701, two; 1702, one; 1721, one. Five regiments of dragoons were raiſed in the year 1683; in 1688, one; 1701, one; 1710, one; 1718, one; 1725, one; 1734, two, &c. The firſt regiment of huſſars was raiſed in 1689; in the year 1696, one; 1702, one; 1734, three; 1735, one; 1741, one; 1742, one; 1743, one, &c. (*a*). During the reign of Leopold, a regiment of infantry was raiſed, which conſiſted of 2500 men, reckoning 150 men to a company; a regiment of cavalry 1000, each

(*a*) Conciſe Hiſtory of all the Regiments in the ſervice of his Imperial Majeſty, till the year 1759. Frankfort and Leipſic, 1760.

each company 100 men (*a*). In the year 1673, the Auſtrian army was computed to amount to 60,000 men (*b*): in the year 1705, it conſiſted of 97,244 infantry, and 35,000 cavalry: in all, 132,244 (*c*). CHAP. II.

With reſpect to the regiments which at preſent conſtitute the army of the Elector of Brunſwick, except the horſe and foot guards, the origin of which is of a more ancient date, and three regiments which are of uncertain origin; one regiment of infantry was raiſed in 1667, another in 1668; in 1670, one; 1675, four; 1680, one; 1691, one; 1692, one; 1702, one; 1704, one; 1707, one; 1717, one; 1724, one; 1741, one; 1745, one, &c. The regiments of cavalry, including the dragoons, except two, of which the year of raiſing is unknown, date their origin in the following order: in the year 1671, one; 1675, two; 1680, one; 1682, one; 1689, two; 1701, two; 1744, one; 1745, one, &c. (*d*)*.

(*a*) Rink's Life of Leopold, p. 245

(*b*) Keyssler's Travels, Vol. II. p. 1001.

(*c*) Rink's Life of Leopold, p. 253.

(*d*) Conciſe Hiſtory of all the Regiments in the ſervice of the Elector of Brunſwick-Luneburg, by J. F. S. Frankfort and Leipſic, 1760.—Conciſe Hiſtory of the Origin of all the different Regiments in the ſervice of the Elector of Brunſwick, by T. v. W. Zelle, 1769.

* For the preſent ſtate of the Imperial and other troops of the Empire, ſee the Statiſtical Tables, Vol. III.

CHAPTER

CHAPTER III.

Affairs of the Empire in the Years 1672—1679. *Appointment of the* GENERALITY, *or commanding Officers, of the Army of the Empire. War of the Empire with France, and Treaty of Nimeguen.*

The contingents to a war of the Empire, ſuch as that with France, granted every time by the States, and the Generality, or commanding officers, appointed at the Diet—On account of the latter, a ſingular occurrence occaſions the Catholic party firſt to exerciſe their right, of preventing the validity of a majority of votes, granted in the Peace of Weſtphalia—The Emperor veſted with full powers from the Empire to negociate the Peace of Nimeguen—Though the States reſerved their right of attending the Congreſs by their Envoys, upon which the Princes aſſumed an equality with the Electors in their ambaſſadorial rights—The Empire itſelf received no information concerning the negociations before they were concluded, and then had no other reſource than to accept the terms—The loſs of the county of Burgundy admitted in the Articles of Peace, as well as the city and archbiſhoprick of Beſançon—Philipſburg converted into a fortreſs of the Empire—Certain ceſſions to the Houſes of Brunſwick and Brandenburg, the latter of which procured the reverſion of Eaſt Frieſeland, and the county of Limburg, in Franconia.

THE military eſtabliſhment, which gradually became permanent in Germany, was confined to particular States. There was as yet no idea of the kind with reſpect to the Empire in general. Whenever there

there was a war of the Empire, every State received a summons to send his proper contingent, or quota of men; and the commanding officers were always appointed at the Diet, as necessity required; and now, indeed, according to the religious equality ordered by the Peace of Westphalia.

In the war with which Lewis XIV. threatened the Dutch in 1671, for opposing his claims upon the Spanish Netherlands, in consequence of his other rights of succession in Brabant, the Germanic Empire was on the point of being under the necessity of taking up arms against the Crown of France. This was actually the case in 1674, when the whole Empire was engaged in a war with that power, which was first terminated in the year 1679, by the Treaty of Nimeguen.

In order to be prepared for this event, a deliberation had been already entered into at the Diet, in 1672, concerning the nomination of the commanding officers. An event happened on this occasion, which, on account of the various circumstances attending it, deserves to be particularly mentioned. Among the other officers, it was agreed that there should be four Major-Generals appointed by the Empire. The candidates on this occasion were two Princes, the Duke of Weimar and the Margrave of Bayreuth, and two Noblemen, Von Leyen and Von Stauf, who were all chosen by a majority of voices. The Princely

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candidates were to be appointed Major-Generals * of the cavalry, and the two Noblemen Major-Generals of the infantry. The latter, however, happened to be Catholics, and the former Proteſtants. The Catholic States imagined that it might be prejudicial to their intereſt, to ſuffer ſuch a precedent as this to paſs unnoticed; for, though an equality of religion was obſerved in the number, yet there was an inequality in this reſpect, that the two Proteſtant Princes were to have the command of the cavalry, and the Catholics only of the infantry. The majority of votes in favour of the former was on this occaſion merely accidental, becauſe ſome of the Catholics were abſent, and others were of the ſame opinion with the Proteſtants. It unexpectedly happened, therefore, that the Catholic party for once ſaw the majority of votes againſt them. In order to prevent the effect of this, the Catholic States, in the College of the Princes, April 10, 1672, appealed to the article of the Treaty of Weſtphalia, which ordained, that as ſoon as one party declared themſelves to be of a contrary opinion from the other, the majority of votes ſhould be of no avail; but that the queſtion in diſpute ſhould be decided by an amicable accommodation. They inſiſted that both the Major-Generals of the cavalry could not be Proteſtants, and thoſe of the infantry Catholics; but that it was neceſſary for a religious equality to be obſerved in the appointment of the officers of the cavalry, as well as of the infantry. At laſt it was agreed, June 10, 1672, that ſix Major-Generals ſhould be nominated

* Generalwachtmeister.

nominated on this occaſion, inſtead of four; and that, in addition to thoſe above mentioned, another Catholic officer, M. de Andrimont, ſhould be appointed to the command of the cavalry, and M. de Kielmannſegge to that of the infantry, which was afterwards put in execution by a decree of the Empire, Auguſt 1, 1672 (a). This circumſtance is certainly on this account very remarkable, as the Catholic party took advantage of this article of the Treaty of Weſtphalia ſooner than the Proteſtants, and as it in general affords us an inſtructive inſtance of the uſe which may be made of it.

The negociations of the Peace of Nimeguen, with regard to the manner obſerved in conducting them, were of great importance to the conſtitution of Germany; becauſe this was the firſt inſtance of a treaty concluding a war of the Empire ſince the Peace of Weſtphalia. It was a matter of no inconſiderable import, therefore, what part would be taken in behalf of the Empire, in order to enforce the right eſtabliſhed by the Treaty of Weſtphalia, that the Emperor ſhould conclude no peace without the conſent of the States. It was at firſt in agitation to nominate a particular Deputation, to attend the Congreſs in behalf of the Empire; but as this was likely to be attended with every kind of difficulty, the Emperor ſent intelligence to the Diet in April, 1677, of all

(a) Pachner Von Eggendorf's Decrees of the Diet, Vol. I. p. 574.

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all that had paſſed till that time at Nimeguen, and promiſed to continue the report; ſo that on the 31ſt of May, 1677, it was reſolved to leave the peace for this time to the Emperor alone, upon the condition that he ſhould regularly communicate the further proceedings of the Congreſs, and wait for their opinion on the ſubject. The States at the ſame time reſerved the right of attending the Congreſs, if they thought fit, by Miniſters appointed by themſelves.

This ſoon revived the jealouſy of the Electors and Princes; for the latter were not allowed to ſend Envoys of the firſt rank to Nimeguen, as the former were, notwithſtanding the celebrated Leibnitz, who was then living at Hanover, publiſhed a book, expreſsly compoſed on the ſubject, in favour of the Houſes of the ancient Princes; among which all the branches of the Houſe of Brunſwick were included (*a*).

With reſpect to the conditions upon which the Empire left the negociations of the Peace to the Emperor, his Imperial Majeſty, it is true, ſubmitted twelve articles to the deliberation of the States, June 23, 1678, but without giving them any further intelligence. On the 20th of January, 1679, he made an excuſe to the Empire, that he was not able to ſend any

(*a*) CÆSARINUS FURSTENERIUS, *de Jure Suprematûs ac Legationis Principum Germaniæ*, 1677.—PÜTTER's Literature of Public Law, Vol. I. p. 249, 253.

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any further accounts of the negociations, to be depended upon, becauſe every thing (which is certainly the caſe with moſt negociations) had remained for a conſiderable time in the greateſt uncertainty. At the ſame time he communicated ſeveral projects; but always with this declaration, that they were no certain grounds to admit of any deliberation. Soon after, February 5, 1679, the Peace was ſigned at A. C. 1679. Nimeguen by the Imperial Ambaſſador, in the name of the Germanic Body, after a clauſe had been expreſsly inſerted, that no oppoſition nor reſervation on the part of the Empire ſhould be made in future againſt the ſignature which had been affixed by the Emperor's Ambaſſador alone. Notwithſtanding this, a term only of eight weeks was allowed for the Empire to ratify the Peace; and the whole was promulgated by a commiſſorial decree, March 3, 1679, with an excuſe, that the time would not admit of the buſineſs being otherwiſe conducted; but that it ſhould not be conſidered as any precedent in future. Many of the States, when they heard this, could not conceal their diſſatisfaction. The Empire, however, was obliged to give its conſent, March 23, 1679, to a peace in which it could not by any means boaſt of having been a co-operating party. The King of Denmark and the Elector of Brandenburg continued the war for ſome time afterwards; but it was not long before they likewiſe were obliged to accommodate matters by a ſeparate treaty.

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Among all the articles of the peace, which the Crowns of France and Sweden concluded with the Emperor and his allies, the moſt important, and which, with reſpect to the Germanic Empire, was attended with the moſt permanent conſequences, was, that the county of Burgundy (Franche Comté), which the King of Spain had been hitherto in poſſeſſion of, as a part of the Burgundian Circle, under the ſupremacy of the Empire, was now entirely ceded to France, became ſubject to the ſovereignty of that country, and of courſe therefore could no longer be conſidered as a part of Germany.

By this article, not only Beſançon, which was formerly an Imperial city, till it was ceded to Spain in 1652, came under the dominion of France, but the effect naturally extended itſelf to the Archbiſhoprick likewiſe of which the city of Beſançon was the ſee. This Archbiſhoprick was not included in the ceſſion of Beſançon to the King of Spain. The Archbiſhop, on the contrary, continued as before a Prince of the Germanic Empire, and took his ſeat in the College of the Princes immediately after the Archbiſhop of Salzburg, before all the Biſhops; and Spain had no objection to a vote being ſtill continued, which could of courſe be always made uſe of to anſwer private purpoſes. In the Treaty of Nimeguen the Archbiſhoprick was not mentioned; there was in fact, therefore, no ceſſion of it to the Crown of France: ſo that the name of Beſançon continued in the liſt of the votes in the College of the Princes;

and

and even now, when the Archbiſhop of Beſançon is ſummoned among the Princes, he is called by name, though in all the Protocols it is always immediately followed by the word *VACAT*. The Archbiſhop of Beſançon likewiſe, though a ſubject of France, always bears the title of *Prince du Saint Empire*. In other reſpects it follows of courſe, that neither an actual vote, nor any effect whatever of a further connexion with the Empire, ſuch as the contribution of money, &c. any longer exiſts. With reſpect to the other contents of the Treaty of Nimeguen, I have only to mention, that the Crown of France ceded the right of garriſoning in the fortreſs of Philipſburg, obtained by the Peace of Weſtphalia, again to the Emperor and Empire, upon the condition of receiving Freyburg in return from the Houſe of Auſtria, with a free paſſage from Breiſack. Thus Philipſburg was made a fortreſs of the Empire, though the territory on which it is ſituated belongs to the Biſhop of Spires. The works of the fortification, however, became the property of the Germanic Empire, which is obliged to keep them in repair, and maintain a garriſon. Since that, ſeveral Roman months have been granted at different periods for that purpoſe: but there have been always ſo many deficiencies in the payment, that the cheſt for the maintenance of the fortifications of the Empire has ſeldom contained a ſufficient ſum to defray the neceſſary expences. The workmen employed in the fortreſs, ſuch as maſons, carpenters, &c. are often obliged to make immediate application to the Diet, and petition for the payment of their bills.

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Still greater difficulties attended the garrisoning of it; for every State of the Empire was to send his quota of men; so that, when the garrison of Philipsburg was to be relieved, a certain number of soldiers was to be sent, for instance, even out of Mecklenburg and Pomerania, to the furthest borders of the Empire. The adjacent Circles of Franconia and Swabia, for this reason, consented provisionally to take the care of the garrison upon themselves, which was afterwards continued. The Governor of the fortress was always nominated by the Imperial Court, and only advice thereof given to the Diet. In this manner the affair continued till November 1, 1772, when the garrison of the Circles left the fortress. Prince George of Hesse-Darmstadt, who was then Governor, proposed to take the fortress upon himself, upon certain conditions, if the Empire would resign it entirely to him and his heirs; but this proposal was rejected, for the Bishop of Spires protested against it as the Sovereign of the country, and has the whole of it now in his own possession.

By the Treaty of Nimeguen, the House of Brunswick obtained from the Crown of Sweden the Provostship and Prefecturate of Dormern, with a district of land between the river Weser and the Aller, which belonged to the Dutchy of Verden. That Crown was obliged likewise to cede a part of Pomerania, on the right side of the Oder, to the Elector of Brandenburg, with the share which Sweden formerly had in several tolls. The Court of Berlin, however, asserted

asserted a right to a much greater compensation for the injuries suffered by the war; and that Electoral House obtained on this consideration, December 10, 1694, the promise of the reversion of East Friesland, and the county of Limburg, in Franconia, to which the Electoral College first granted its consent in the year 1715. CHAP. III.

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CHAPTER IV.

Immediate Consequences of the Treaty of Nimeguen, 1679—1685; *particularly the new Regulations in the Military State of the Empire, and the Association of the Circles.*

Ill effects of the Peace of Nimeguen—Among other things, the erection of the Chamber of *Re-union*, by the Court of France—Conference at Frankfort—Surprise of the Imperial city of Strasburg—New Military establishment—The number of troops, amounting to 40,000, to be raised by the ten Circles, and to be doubled and tripled, as occasion required—Peculiar circumstances of the Circles of the Lower and Upper Rhine, Bavaria, and Austria, respecting the new military establishment—Commencement and progress of the Association of the Circles.

THE Treaty of Nimeguen could scarcely be considered as a real peace, because the same hostilities were continued on the part of France as before. On the contrary, immediately after the peace was concluded, fresh complaints were made, concerning the Chambers of Re-union* established at Breisack, Mentz, and Besançon, by means of which, Lewis XIV. decided, by the sentence of his own Judges, his various claims upon the countries alledged to be dependent upon the Landgraviate of Alsace, the three Bishopricks

* The word *re-union* expresses, in the French law or history, the reduction of a province to an immediate dependance on the Crown.—DE LOLME's Constitution of England, p. 18.

Biſhopricks of Lorraine, and the County of Burgundy, in favour of himſelf, and immediately took poſſeſſion of them. By this deciſion, whole countries, bailiwicks, and towns, were made ſubject to the dominion of France; as, among various others, the countries of Deux-Ponts, Saarbrücken, Veldenz, Germerſheim, &c. CHAP. IV.

A conference was to have been held upon this ſubject by an embaſſy ſent from the Emperor, an extraordinary deputation from the Empire, and an embaſſy from France: but this plan was ſo unſucceſsful that, before the conference was opened, Straſburg, which had been hitherto an Imperial city, was surpriſed by the French troops, September 30, 1681. A. C. 1681. The Diet, on this account, entered into more ſerious deliberations, in order to be prepared to act in a war of the Empire with France, with greater energy. With this view, it was reſolved to place the military eſtabliſhment of the Empire on another footing, which has ever ſince continued.

The army of the Empire had been hitherto only divided according as the States contributed their quota of men, in the order in which they followed each other in the matricula. Thus it might eaſily happen that ſoldiers, for inſtance, out of the country of Mecklenburg, might be mixed with thoſe of Würtenberg, who, ſo far from being uſed to the ſame mode of exerciſe, or being provided

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with ſimilar arms, did not ſo much as underſtand each other's language. Inſtead of this, it was at laſt agreed, that it would be a great improvement if the men, contributed by each of the States, were divided, not according to the rank of the States themſelves, but according to the ſituation of their reſpective countries, for which the conſtitution of the Circles afforded the moſt convenient plan. A liſt was drawn up for this purpoſe, of the number to be ſupplied by each Circle, to conſtitute an army of 40,000 men. If it ſhould hereafter be neceſſary for the army to be increaſed to 80,000, or 120,000, the liſt need only be doubled or tripled. The diviſion of the number of troops, among the different members, was left to the Circles themſelves; by which means, ſome of the moſt conſiderable of them had to raiſe whole regiments or battalions, ſquadrons, or companies, with their neceſſary officers. Other States, whoſe countries were contiguous to each other, raiſed only one company together; and ſometimes a State contributed only a few private ſoldiers, while another ſupplied an officer, ſubaltern, &c. Every complete quota of a Circle was then divided into as many regiments as was neceſſary, in proportion to the number of men, and every regiment again into companies, which could be furniſhed with the ſame uniform and arms, and obſerve the ſame military diſcipline.

The diviſion among the ten Circles of the 40,000 men, conſiſting of 12,000 cavalry, including 2000 dragoons,

dragoons, and 28,000 infantry, was rated in the following proportion. CHAP. IV.

The Circles of	Cavalry.	Infantry.
The Lower Rhine -	600 -	2707
Upper Saxony - -	1322 -	2707
Auſtria - -	2522 -	5507
Burgundy - -	1321 -	2708
Franconia - -	980 -	1902
Bavaria - -	800 -	1494
Swabia - -	1321 -	2707
Upper Rhine - -	491 -	2853
Weſtphalia - -	1321 -	2708
Lower Saxony - -	1322 -	2707
	12,000	28,000
Total - - -	40,000	

With reſpect to the two Circles of the Electoral or Lower, and the Upper Rhine, it was objected, that the different States of thoſe Circles were not able to contribute their quota: both theſe Circles therefore were, on that account, rated lower than the reſt. The other Circles on this occaſion undertook to make up the deficiency, but upon condition that it ſhould not be conſidered as a precedent in future. In the following year however, 1682, the Circle of Bavaria pretended that the aſſeſſment of 800 cavalry, and 1494 infantry, was too heavy: inſtead therefore of the triple number amounting to 2400 cavalry and 4482 infantry, the Circle of Bavaria would only anſwer for two regi-

 ments

BOOK IX. ments of infantry, amounting to 3473 men all together, and no cavalry at all.

The Circle of Auſtria was rated higher than the others, probably for this reaſon; becauſe the Houſe of Auſtria maintained a numerous army; and in the wars where, as in the preſent ſituation of affairs, the raiſing of an army of the Empire was likely to come in queſtion, it was its intereſt to ſet a good example. Bohemia was not included, becauſe it not only did not belong to any Circle, but, even in the number of the Electorates, was almoſt only nominally reckoned, without being in any other reſpect annexed to the Empire. In the year 1708, this objection was entirely obviated by the re-admiſſion of its Electoral vote; yet, notwithſtanding this, there was no alteration made in the contribution to the army. Another event at that period, which related to the military eſtabliſhment of the Empire, was, that ſeveral Imperial States of the Upper Rhine, and that part of Germany called the Weſterwald, entered into a defenſive league, under the name of an Association, with the Circle of Weſtphalia, on account of the danger which they were chiefly expoſed to, from the French hoſtilities. The Emperor himſelf ſoon afterwards, June 10, 1682, acceded to the league. In conſequence of this, the acceſſion of the Circle of Bavaria likewiſe followed, March 28, 1683; and after ſeveral other alliances and leagues entered into by different States, war was at laſt declared againſt France, by the whole

A. C. 1689. Empire, February 14, 1689.

Since

Since that time, in ſeveral ſimilar caſes, when there has been any idea of commencing a war with France, the firſt meaſure generally adopted, has been an aſſociation of ſome of the adjacent Circles. There was in that caſe a greater certainty that the aſſociated Circles at leaſt, would be regular in ſending their quota of troops to the field; and this was always an excellent previous ſtep, in order to induce the other States to give their votes afterwards in favour of the war. The revolutions however, occaſioned by the death of Charles VI, gave this affair likewiſe an entirely different turn.

In theſe circumſtances, Leopold endeavoured to profit from the aſſociation; but a truce intervened, which was concluded by the Emperor with France, Auguſt 15, 1684; and an extraordinary cataſtrophe ſoon afterwards wholly deſtroyed its effects, and not only involved the Empire in another war with France, but was attended with the moſt ſerious conſequences, which are felt in a great meaſure even to the preſent day.

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CHAPTER V.

Extinction of the Electoral Branch of Palatine-Simmern, and its Effects—War of the Empire again with France, and the Peace of Ryswick. 1685—1697.

The death of Charles, the Elector Palatine, by which the Electoral line of Palatine-Simmern became extinct—France supports the pretensions of the Dutchess of Orleans against the line of Palatine-Neuburg, which succeeded—A war of the Empire with France, which was terminated by the Treaty of Ryswick—Fresh disputes concerning the mode of conducting the negociations—The Empire acquires the possession of the fortress of Kehl, by the Peace, but loses Strasburg and other places *re-united* to the French Crown on the other side of the Rhine—A clause inserted in the fourth article of the Peace, respecting the places on this side the Rhine, taken by France, and ceded again, very injurious to the Protestants, viz. that the Catholic religion should continue in those places as it was—which was contrary to the contents of the Peace of Westphalia, in other respects the basis of the Peace of Ryswick, and contrary to the allowed instructions of the Empire, alluding to the Capitulation of the Emperor—Notwithstanding this, the Peace was signed, though only by three Protestant Deputies, and ratified by an opinion of the Empire, but with the addition of a postscript, at the request of the Protestants—Warm debates on the subject at the Diet, especially as the clause had 1922 places for its object, where, under its protection, the state of religion had been changed.

C. 1685. THE death of Charles, the Elector Palatine, who was the last of the branch of Palatine-Simmern, May 16, 1685, occasioned a dreadful catastrophe. It afforded,

CHAP. V.

afforded, in the firſt place, a freſh ſubject for diſpute with France; becauſe the ſiſter of the deceaſed Elector had been married, in 1671, to the Duke of Orleans, and made ſuch pretenſions now, in the quality of heireſs to her brother's perſonal property, that the new Elector, Philip William, of the branch of Palatine-Neuburg, was ſcarcely to inherit any thing which had been in the poſſeſſion of the branch of Palatine-Simmern, except what was abſolutely feudal. Lewis XIV. ſo zealouſly ſupported theſe pretenſions, that at laſt, in the year 1688, juſt as another diſpute aroſe concerning the Archbiſhoprick of Cologne, in which the French Court ſupported the Biſhop of Straſburg, who was of the Princely Houſe of Furſtenberg, and the Imperial Court took part with Joſeph Clement, a Prince of Bavaria—the French ſuddenly invaded the countries of Baden, Würtenberg, and the Palatinate, with a powerful army. This of courſe put an end to the truce; and almoſt a general war broke out, which was not terminated until the Peace of Ryſwick in 1697.

The Peace of Ryſwick might in this reſpect be conſidered as the firſt of its kind, because the negociations in behalf of the Empire were not on this occaſion left to the Emperor, as at the Peace of Nimeguen; but an extraordinary deputation, conſiſting of thirty-two States, of both religions, was expreſsly appointed to attend, by their ſub-delegates, at Ryſwick. Here likewiſe a new obſtacle aroſe; for the ſub-delegates from the States, when they were A. C. 1697.

aſſembled

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aſſembled at Ryſwick, were not admitted to the conferences with the foreign Miniſters; but the Imperial Ambaſſadors reported the proceedings only when they thought proper, and deſired their conſent. (In the year 1742, an article was firſt inſerted in the Capitulation at the election of the Emperor, that in future, at all Congreſſes with the Miniſters of foreign Powers, particularly of ſuch which had been parties in the war, the Envoys from the Empire ſhould be abſolutely admitted, and that the Imperial Ambaſſadors ſhould negociate nothing without their conſent, nor make any attempts to act in their ſtead (*a*). This article, however, ſince that period, has never been actually enforced.)

The Peace itſelf was far from anſwering the general expectation. The King of France, it is true, promiſed to reſign all his poſſeſſions on the right ſhore of the Rhine, by which Germany, among other places, not only recovered Philipſburg, but Kehl*, a place which had been fortified in the mean time by the French, oppoſite the bridge acroſs the Rhine at Straſburg, as a ſecond fortreſs of the Empire: it was abandoned

(*a*) Capitulation, Art. iv. § 11.

* Kehl firſt ſtood at the eaſt end of the bridge over the Rhine at Straſburg; but was afterwards built at the conflux of the Kingey and Rhine, and is now in a ruinous condition. The adjacent territory belongs to the Margrave of Baden. The remains of the building were lately occupied by M. de Beaumarchais, who printed his famous edition of Voltaire there, and other books not ſuffered to be printed in France.

abandoned however in 1754, ſooner than the fortreſs of Philipſburg, which was ſupplied with a garriſon by the Circle of Swabia. The city of Straſburg, on the contrary, together with all the other places taken by the French on the left ſhore of the Rhine, remained in their poſſeſſion.

One evil which was totally unexpected, and even to the preſent day has not yet been remedied, related to the change in the ſtate of religion, produced in a conſiderable part of Germany by a clauſe which the French Miniſters inſiſted ſhould be inſerted, in a very ſingular manner, in the Peace.

Among the places which the French had taken poſſeſſion of, after the Treaty of Nimeguen, under the pretence of the *Re-union*, there were many in which they had introduced the Catholic religion, and given the adherents to that perſuaſion the eſtates belonging to the Proteſtant churches. On account of a complaint made on this ſubject by the Proteſtants, it was agreed, in the truce concluded for twenty years in 1684, Art. viii. that every thing which reſpected religion ſhould remain in the ſtate in which it was ſettled by the Peace of Weſtphalia. But among the other breaches of the truce which the French were guilty of, they continued to introduce the *Simultaneum* in the places they had taken; and this was aſſigned as one of the reaſons which induced the Empire to declare war againſt France in 1689.

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An article was even inſerted in the Capitulation of Joſeph I, when he was elected King of the Romans in the year 1690, which made it the duty of the Emperor to conſider it as a matter of the firſt importance, "that whatever was occupied by the enemy in "the Empire, or wherever any alterations had taken "place in the eccleſiaſtical or political ſtate of the "country *(in eccleſiaſticis et politicis)*, it ſhould be "reſtored, to the ſatisfaction of the oppreſſed States "and ſubjects, to its ancient condition, agreeably "to the fundamental laws of the Empire, and articles "of peace." No other articles of peace could be in view here than thoſe of Munſter and Oſnabruck, and the treaty of Nimeguen. It was certainly the intention, therefore, that every thing ſhould be reſtored, agreeably to the definitive epoch ſettled by the Peace of Weſtphalia.

This was alſo the expreſs object of the inſtructions of the Empire, for the deputation appointed for the negociation of the Peace of Ryſwick, January 15, 1697. The Proteſtants expreſſed a wiſh, that an article might be accurately drawn up, and inſerted in the Peace, relative to the reſtoration of the ſtate of religion, and applicable to every particular circumſtance; but the Imperial Miniſters declared, that the negociators of the peace had only to inquire into matters which concerned the Germanic Empire and the Crown of France, and not into what related to the internal conſtitution of the Empire, or particular States among each other; that the object now

to

to be attended to, was the recovery of places and countries taken by the enemy; and that the alterations, which might then appear to have taken place, contrary to the Peace of Weſtphalia, would afterwards be properly reſtored by the official interpoſition of the Emperor. CHAP. V.

The Proteſtants therefore contented themſelves with the Treaties of Weſtphalia and Nimeguen being eſtabliſhed as the baſis of the third article of the Peace of Ryſwick, with this addition, that immediately after the exchange of the ratifications, both the treaties ſhould be put in execution, in affairs of religion as well as others, and be punctiliouſly obſerved in future, where no exception ſhould be expreſsly made by agreement to the contrary. Directly afterwards, in the fourth article, the Peace enjoined, that all the places of Alſace, re-united by France, ſhould be reſigned to their former poſſeſſors. It followed of courſe, therefore, that whatever had been done in ſuch places, contrary to the definitive epoch fixed by the Peace of Weſtphalia, ſhould be fully reſtored according to the ſenſe of that treaty; and till the very laſt hour, when the whole treaty of Ryſwick was ſettled, there never was the leaſt queſtion concerning any exception whatever.

They were already employed in tranſcribing the Peace, when juſt at the approach of midnight, October 29, 1697, the French Miniſter inſiſted upon the following clauſe being added to the fourth article,

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" that the Roman Catholic religion ſhould be con-
" tinued in the places reſtored by France, as it was
" at preſent;" and at the ſame time added a threat,
" that the King would otherwiſe immediately break
" off the negociations for the peace, and continue
" the war againſt thoſe who made any ſcruple of
" complying."

Notwithſtanding this clauſe ſo evidently contradicted the definitive epoch, ſettled by the Peace of Weſtphalia, and was ſo inconſiſtent with the rules preſcribed in the inſtructions of the Empire for the Deputation, and all the preceding negociations, yet the Catholic ſub-delegates declared, that they had rather ſubſcribe to the Peace upon thoſe terms, than occaſion a continuation of the war; eſpecially as the French Miniſters repeatedly declared, that it was inconſiſtent with the honour of their King, and that his Majeſty could not in conſcience ſuffer the ſtate of thoſe churches which he had built from motives of piety, to be altered. Thus the Envoys from the Emperor and Catholic States conſented to ſign the Peace; but all the Proteſtant States, except Würtenberg, the Counts of Wetteravia, and the Imperial city of Frankfort, refuſed. All the other Proteſtant Envoys, on the contrary, ſigned a memorial, which they preſented to the mediating powers, declaring that they could not ſubſcribe to the Peace, becauſe the clauſe which was inſerted was contrary to the Peace of Weſtphalia, the Capitulations of the Emperor, and King of the Romans, to the inſtructions received from the

Empire, and even to the preceding negociations, and the expreſs declarations of the Imperial and French Miniſters themſelves. CHAP. V.

In the mean time, however, a term of ſix weeks only was allowed for the ratification of the Peace at the Diet at Ratiſbon, with the ſame threats to continue the war againſt thoſe States who oppoſed it. In conſequence of this, an opinion of the Empire was drawn up for the RATIFICATION, but with a particular POSTSCRIPT, in which an aſſurance was required from the Catholics, that they would not take any advantage of this clauſe againſt the Proteſtant States of the Empire in general; and that the clauſe therefore ſhould continue only as an affair between the Empire and France; eſpecially as the French Miniſters themſelves had declared, that it was only to be underſtood of a few churches, which the King himſelf had built and endowed.

Notwithſtanding this, the Emperor himſelf ratified the Peace afterwards, without taking any notice of the Poſtſcript. When this matter came into diſcuſſion at Ratiſbon, it occaſioned ſuch a violent debate between the two religious parties, that it was found adviſable at laſt for both ſides to recant their expreſſions; and at laſt the Diet put a ſtop to its proceedings for that time on the ſubject. The only thing which could afford the ſmalleſt conſolation to the Proteſtants was, that it might be foreſeen with a great degree of probability, that a war would ſoon

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break out again with France, on the ſcore of the Spaniſh ſucceſſion; in which caſe, the whole Treaty of Ryſwick, and of courſe therefore the clauſe of the fourth article, would be rendered abortive.

In the mean time it appeared, from a liſt which M. de Chamois, the French Envoy, produced at Ratiſbon in 1699, that the queſtion did not merely relate to a few churches which had been endowed by France, the number of which amounted to no more than twenty-nine; but to one thouſand nine hundred and twenty-two places, in which the ſtate of religion had been changed, under the protection of this clauſe in the article. The Catholics were not contented with following the literal ſenſe of the clauſe, to leave the Catholic religion in the reſtored places as it was; but they applied the laſt words to the whole time of the preceding war; ſo that, if even a Catholic army-preacher had performed divine ſervice in a Proteſtant church, as he happened accidentally to go through the country, that religion was now to be eſtabliſhed for the future.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL

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CHAPTER VI.

Change in the State of Religion in the Palatinate, Claims of the Dutchefs of Orleans adjufted, and Difpute concerning the Succeffion to that Electorate.

The Catholic religion favoured by the Catholic fucceffors in the Palatinate, to the great prejudice of the Proteftants—A convention entered into by the Houfe of Brandenburg, in 1705, with the Elector Palatine, which was of fome ufe, although many grievances were winked at—The Proteftants in the Palatinate afterwards more oppreffed and aggrieved, particularly by the circumftance of almoft all the court-offices being given to Catholics—Other Proteftant countries willingly receive Palatine, as well as the French Refugees, who left France after the repeal of the Edict of Nantz—Claims of the Dutchefs of Orleans adjufted—Difpute concerning the order of fucceffion in the Palatine Electorate—After this period, more accurate ideas of lineal fucceffion, according to the right of primogeniture.

THE whole hiftory of the claufe in the Treaty of Ryfwick, is on this account of more importance, becaufe the Palatine Electorate happened at this period to have a Catholic Sovereign. An agreement indeed was made between the laft Elector of the line of Simmern and the firft of the Houfe of Neuburg, before the death of the former, January 5, 1685, and figned by counfellors from both parties, at Hall, in Swabia, May 12, the fame year; by virtue of which, A. C. 1685.

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the Calvinists and Lutherans throughout the country were to be protected in the free exercise of their religion, in conformity to the rules of the Treaty of Westphalia, and were not to be excluded from serving in any public office (*a*); but the Palatinate soon afterwards lost many of its Protestant inhabitants, through the unheard-of cruelties of Louvois, the French Minister, in the months of January and February, 1689*, when every

(*a*) LUNIG's Imperial Archives, Part. Spec. Vol. V. p. 734. STRUVE's Ecclesiastical History of the Palatinate, p. 687.

* The accounts given by historians of the conflagrations and unheard-of cruelties of the French army, under the command of the Maréchal de Duras, in the countries contiguous to the Rhine and Neckar, are dreadful beyond description: the remonstrances and earnest intreaties of the Margrave of Baden were fruitless; his capital, and many other towns and villages, were totally destroyed. The beautiful country of the Elector Palatine was in a still more deplorable condition. The army, not satisfied with levying the most exorbitant contributions, and plundering the towns they had taken, even opened and pillaged the tombs, and threw about the bones of the illustrious dead; particularly at Spires, where they destroyed the superb monuments of eight Emperors and three Empresses. They stripped the very altars of the village churches; and the distressed inhabitants, after giving up their all to the insatiate conquerors, were barbarously driven naked from their dwellings; and their wives and virgin daughters violently sacrificed, in the presence of their husbands and their parents, to wanton and unbounded lust. The French Minister, the Marquis de Louvois, at last ordered, in the name of his *Most Christian Majesty*, the whole country, a district of more than 30 English miles in length, to be destroyed by fire. The populous cities of Heidelberg, Manheim, Frankenthal, Spire, Oppenheim, Creutzenach, Alzey, Ingelheim, Bacharach, Sinzheim, Bretten, and many others, were consumed to ashes. The costly palaces of the Palatine

every town and village throughout the whole country, from Spire to Oppenheim, was by his order consumed to ashes; and the state of religion of the Palatine Protestants was afterwards, in one reign after another, constantly reduced to a more deplorable condition. CHAP. VI.

The Elector John William, who succeeded to the government upon the death of his father, Philip

 William,

Palatine Electors, which had been the work of ages, and other magnificent public buildings, were now a heap of ruins, and had scarcely one stone left upon another. A circumstance which added to the misery of the unfortunate fugitives, was, that this horrid scene was perpetrated in the midst of a severe winter, when the ground was covered with snow. The infirm, the aged, and helpless infants, who were unable to escape, were either sacrificed with their paternal dwellings to the flames, or exposed to the most inclement weather, and perished by the frost: many were shot at and maimed for the amusement of the brutal soldiers, and left bleeding in the woods. In the neighbourhood of Heidelberg, a woman was ripped up with a bayonet, the untimely fruit torn from her womb, and her husband murdered by her side. That beautiful city seemed destined to suffer more than any of the others. When it was taken in 1688, the army set no bounds to their cruelty: though the citizens capitulated, and the Dauphin himself promised them security; yet, when the enemies quitted it on the approach of the Imperial army, they broke their treaty, and laid the town in ashes. The French Generals, De Tesse and Ronville, were so moved at the sight of the raging flames, and tears of the distressed inhabitants, that they at last suffered many to rescue their effects; but when the burgomaster fell upon his knees, and intreated them to save the castle, De Tesse uttered a deep sigh, and told him "that it grieved him to be a spectator of their "misery; but that it was the King's orders—they were absolute, "and must be obeyed." In the year 1693, the scene was still more dreadful than before. The scattered inhabitants had scarcely restored

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William, September 2, 1690, was a perfect tool to the Jeſuits: he not only took advantage of the clauſe in the Treaty of Ryſwick, and ſuffered the Catholics to keep all the churches, the houſes of the parochial clergy, ſchools, and revenues, which had been taken from the Proteſtants during the war; but iſſued another order, that the three religions introduced in the Empire,

reſtored their native town to a tolerable ſtate of defence, before they were again attacked by a powerful army of the enemy: the garriſon was not ſtrong, but brave, and might have held out much longer, but for the cowardice of their daſtardly commander, who provided for the ſafety of his own perſon, at the expence of the devoted city. The French entered in triumph. The ladies and citizens wives ſolicited the general to ſpare their honour—he promiſed, and ordered them to retire to one of the remaining churches, where, contrary to his engagement, they were raviſhed by the brutal troops; the church was then ſet fire to; and the only place of refuge, which heathens would have held as ſacred, was conſumed to aſhes. The reſt of the inhabitants, who amounted to 15,000 in number, were ſtripped of all they had, and obliged to fly their paternal walls, comfortleſs and naked. When the Moſt Chriſtian King of France heard of the city of Heidelberg being again taken, he ordered the *Te Deum* to be ſung in the churches at Paris, and a coin to be ſtruck, which repreſented the town in flames, with the inſcription *Rex dixit, et factum eſt*. The commanding officer, De Heyderſberg, however, was puniſhed according to his deſerts. As ſoon as he arrived at the camp of Heilbron, he was immediately arreſted, and a court-martial held upon his conduct, which condemned him to the following puniſhment. Being a Knight of the Teutonic Order, he was taken, by order of the Grand Maſter, to the Teutonic houſe, at Heilbron, and there equipped in his full habit, with all the ornaments of chivalry. He was then addreſſed in the character of Knight; his crimes and breach of honour were laid before him; and he was declared an unworthy member of that illuſtrious

Empire, except where the ſole exerciſe of the Catholic religion could be maintained by virtue of the clauſe in the Treaty of Ryſwick, ſhould be allowed the common uſe of the churches, burying-grounds, and bells, but ſo that one religion ſhould not be any hindrance to the worſhip of the other: at the ſame time he gave all the eccleſiaſtical eſtates, on pretence of CHAP. VI.

illuſtrious ſociety, and that he had diſgraced and forfeited his croſs: his robes were then torn with violence from his ſhoulders, and the ribband from his neck: he was ſtruck twice acroſs the face with the croſs; and at laſt the youngeſt Knight led him to the door of the hall, and kicked him out: a guard waited to receive him, and the diſgraced Knight was conducted immediately to priſon. On the third day he was taken in the common executioner's cart to the camp, and carried through the lines, from one wing to the other, of the whole allied army, which was expreſsly drawn out for the purpoſe: he was then brought before his own regiment, where he deſcended from the cart, to hear his ſentence publicly pronounced; which was, That all his eſtates ſhould be confiſcated, and his head ſevered from his body by the ſword of the common executioner. He begged for a long time that he might be ſhot, inſtead of being beheaded, which was the death of the vileſt malefactors; but his intreaties could not prevail; till at laſt, juſt as the executioner was prepared to perform his office, an order came to have his ſentence changed to one ſtill more diſgraceful. The executioner then hung his ſword by his ſide, but took it back immediately, broke it in pieces before his face, and after he had ſtruck him three times on the head with the hilt, threw it at his feet: after which, he was baniſhed for ever from the territories of Auſtria, and the Circles of Swabia, Franconia, and the Upper Rhine. He was then obliged to aſcend his cart again, and was carried over the Neckar, where the executioner unbound him; and in this miſerable condition ſet him again at liberty, poor, and branded with infamy.—Theatr. Europ. Tom. XIV. p. 443.—Londorpi Acta Publica, Tom. XIV. c. 5.—Hiſtory of Heidelberg, by Kaiſer. Frankfort, 1733.

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of their having formerly been badly managed, into the hands of commiſſioners (*a*), the greateſt part of whom were Catholics: he reduced likewiſe the income of the Proteſtant clergy, and increaſed that of the Catholics. It was pretended, that the *Simultaneum*, now that it was once introduced, was a legal argument in favour of the proportionate diviſion of all the revenues of the miniſters of the Proteſtant churches and ſchoolmaſters, with the Catholics, as the appurtenances of religious worſhip; not to mention a variety of other innovations, ſuch as the celebration of Catholic holidays, the education of the children of mixed marriages, &c. (*b*) All theſe circumſtances induced the Evangelic, as they are called, or Proteſtant body, on the 28th of November, 1698, to make a ſuitable remonſtrance on the ſubject to the Miniſters of the Elector Palatine, at Ratiſbon (*c*); and in July, 1699, to the Elector himſelf. The latter was preſented by Baron de Wyllich, of Boetzelaer, privy counſellor of government to the Elector of Brandenburg, who was expreſsly ſent on this embaſſy, in the name of all the Proteſtant party (*d*); but, alas! every exertion was in vain (*e*). The remonſtrances which were afterwards addreſſed to the Emperor

(*a*) Called the ADMODIATIONS-COMMISSION.

(*b*) SCHAUROTH's Collection of the Decrees of the Proteſtant Body, Vol. II. p. 286, 289.

(*c*) SCHAUROTH, p. 285.

(*d*) SCHAUROTH, p. 290, 297.

(*e*) SCHAUROTH, p. 305, 398.

Emperor himſelf, December 24, 1700, and again, May 23, 1701, were equally fruitleſs (*a*); and even the repriſals, which were at laſt ſeriouſly threatened by the Elector of Brandenburg, had ſcarcely any effect.

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It was owing to that Prince, that other ſtipulations were entered into, in the year 1705, between the two Houſes of Brandenburg and the Palatinate; and a declaration made in conſequence of them, by the Elector Palatine, reſpecting religion; in which there were ſeveral ordinances in favour of the Proteſtants, though they were obliged to make many conceſſions to their prejudice. In the principal cities, for inſtance, where there were ſeveral churches, one was to be excluſively given up to the Catholics; and where there was only one, the Catholics were to have the choir, and the Proteſtants the nave: that in all the other cities, towns, and villages, with reſpect to the churches, lands, and every thing elſe pertaining to them, as well as the hoſpitals, aſylums for orphans, and alms-houſes, it was agreed that the following proportion ſhould be obſerved in future, viz. the whole ſhould be divided into ſeven equal parts, of which the Catholics ſhould have two, and the Calviniſts five: that all eccleſiaſtical eſtates and rents ſhould for this reaſon be committed to the management of a general adminiſtration, compoſed of two Catholic and two Calviniſtical counſellors; and that the diviſion ſhould be made in the above proportion quarterly: that the eccleſiaſtical

(*a*) Schauroth, p. 399, 401.

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Ecclesiastical Council of the Calvinists should be restored to its former state and jurisdiction, and the Lutheran Consistory continue independent of it, and retain its own administration of those ecclesiastical estates which they were in possession of in 1624: that in other respects every one should be at liberty to make public profession of either of the three religions allowed in the Empire, and renounce the one and embrace the other, as he pleased: that, in cases of a mixed marriage, the religion and guardianship of the children should be regulated by the marriage articles; and, where these were in that respect deficient, by the will of the head of the family; but with this reservation, that the children should be left to the freedom of their own consciences, when they were arrived at years of discretion: that the Protestants should not be under any necessity of strewing grass in Catholic processions, attending with their arms, or bearing flags or crucifixes; neither should they be under any necessity of ringing the bells at the repetition of the *Ave Maria*, or on Catholic holidays; taking their hats off at the morning, noon, or evening bell; presenting their arms, or kneeling before the Host; or desisting from their work on Catholic holidays; and that they should be under no necessity of submitting to baptism in cases of sickness, making use of Catholic midwives, observing fasts, quitting the country on account of their religion, &c.: that all matrimonial affairs should be settled according to the orders of the courts established for that purpose; and

that,

that, in cafes of a mixed marriage, the plaintiff fhould have his caufe tried in the courts of the defendant (*a*). CHAP. VI.

We may learn even from the contents of this convention, the nature of the grievances which the Proteftants fuffered in thofe days, in the dominions of the Elector Palatine. This convention however, fince that period, has been far from being ftrictly obferved (*b*). By the ecclefiaftical eftates and rents being taken from the Calvinifts, and allotted to the Catholics, the means of fupport of the Calviniftical clergy have been fo diminifhed, that the offices of upwards of fixty Calviniftical parochial minifters and fchoolmafters were obliged to be fuppreffed for want of competent incomes. Many eftates, which were productive of confiderable revenues, were taken from the Calvinifts, and transferred to the Jefuits, or to other

(*a*) Lunig's Archives, Part. Spec. Vol. V. p. 754.—Faber's State Chancery, Vol. X. p. 71, 803—Struve's Ecclefiaftical Hiftory of the Palatinate, p. 1112.

(*b*) For a more particular and circumftantial account of this, the reader may refer to a book written on the fubject, entitled "The Prefent State of Religion and Religious Difputes in the "Lower Palatinate, from the beft authorities."—Leipfic, 1780. The moft effential part of it was lately prefented by the collective body of Calviniftical clergy, of the Lower Palatinate, to the Proteftant States, October 30, 1784, in the form of a memorial, with particular inftances ftated to prove the affertions. This was carried to the Dictature, May 6, 1786. And from thefe two fources I have derived moft of the following facts.

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other religious orders (*a*); or elſe they were alienated without any compenſation (*b*). The management of the church lands was committed to the care of an eccleſiaſtical adminiſtration, which was to conſiſt of two Calviniſtical and two Catholic counſellors; but their number has been increaſed to twenty-eight counſellors and near ſeventy ſubordinate officers. A Catholic preſident has been placed at the head of the adminiſtration, who has it in his power to indulge thoſe who are of his own perſuaſion, in a particular manner, by giving them advantageous commiſſions and profitable employments, and procuring an evident ſuperiority in the ſcale of power, for the Catholic

(*a*) Thus the Jeſuits at Neuſtadt, on the Hardt, procured the Stewardſhips of Branchweiler and Winzingen, which were taken from the Calviniſts, and annually produce upwards of 1149 florins in money, 16 fodder * of wine, 228 coomb of rye, 4 coomb of barley, 52 coomb of ſpelt, and 42 coomb of oats. The lands belonging to the convent of Neuberg, which are ſtill more productive, have been given to the Jeſuits at Heidelberg; and the Carmelite rents at Weinheim have been given to the Carmelite Friars again.

(*b*) From the church lands of Limburg, and the Stewardſhip of Bockenheim, the annual ſum of 500 florins in money, 55 fodder of wine, 568 coomb of rye, 45 coomb of barley, 145 coomb of ſpelt, and 60 coomb of oats, have been transferred as a fief from the Elector Palatine to the Counts of Leiningen-Hartenburg. In the year 1706, the convent of Neuhauſen, with near 20,000 florins annual income, and the rents of ſeveral ſtewardſhips, were taken from the Calviniſts, and given up to the Biſhoprick of Worms, for which the Calviniſts received no compenſation whatever.

* A fodder of Rheniſh wine, ſometimes called a tun or fat, contains 6 aumes, 2 butts, or 240 gallons.

Catholic counfellors in general. The falaries even of thefe adminiftrators have lately been fo much increafed, that the Calvinifts have ftill lefs left for their churches and fchools (*a*). Even in the common receipts, inftead of the Calvinifts having, as they ought, five parts of the feven, the proportion at prefent is twenty-three Calvinifts to twenty-fix Catholics and eight Lutherans. The Ecclefiaftical Council, which had the infpection over all the churches and fchools, as one of the firft colleges of the country, immediately in the name of the Elector, has been in like manner degraded by the government to an inferior office; and certain conventions, which, according to the conftitution of the Palatine church, ought to be regularly held, have been entirely prohibited. In this manner the Calviniftical

(*a*) The maintenance of the ecclefiaftical adminiftration, which amounted, in 1706, to 6276 florins, and was then thought an exorbitant fum, in the year 1775 amounted to 33,358 florins, and in the produce of the lands, to 996 coomb of rye, 53 coomb of barley, 269 coomb of oats, and 79 fodder of wine. Of this, the Catholic members of the adminiftration have 19,328 florins, 581 coomb of rye; together with all the barley and oats, and 45 fodder 1 aume of wine; fo that they have 5498 florins, 168 coomb of rye, 53 coomb of barley, 266 coomb of oats, and 11 fodder 2 aumes of wine, more than the Calvinifts; although they contribute two-fevenths to the cofts: they receive therefore near 9798 florins, 269 coomb of rye, and 22 fodder 5 aumes of wine, more than they contribute. The falary of the Catholic Prefident alone, amounts to 5000 florins. Befides this, he receives 40 florins extra for ftationary: from the year 1765 till 1780 however another fum for ftationary, amounting to 3173 florins, was paid him in a feparate account.

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Calviniſtical religion, which even in the year 1618 was the profeſſed religion of the country, and which, by virtue of the Peace of Weſtphalia, ought in equity to have had that very year conſidered as a definitive epoch for its reſtoration and ſupport, has in many conſiderations ſcarcely retained ſo much liberty as is granted without any heſitation even to the Jews.

A circumſtance by which the Proteſtants in the Palatine have been the greateſt ſufferers, is, that almoſt all the offices at the court, and throughout the whole country, have been given only to Catholics (*a*). This alone has very naturally been the cauſe of a number of Catholic families continually ſettling in the country, and making their fortunes. The number of Catholics has daily increaſed throughout the country, by favouring mixed marriages, and educating children in the Catholic religion; encouraging a change of religion, or admitting new Catholic burghers and peaſants; and who can ſay what other means have been adopted for the purpoſe? Many Proteſtants

(*a*) A very few inſtances excepted, the Calviniſts are ſtill excluded from all offices about the court, and in the courts of judicature, as well as from the magiſtracy in the towns, and offices of bailiffs in the country. This excluſion is extended even to the village conſtables, clerks in the courts of juſtice, and beadles. Inſtead of appointing to thoſe offices old experienced Calviniſts, who are natives of the country, they had rather have journeymen bricklayers, ſtraw-cutters, ſhepherds, and day-labourers, from other other countries, if they are but Catholics. A Calviniſt bailiff, though the whole place perhaps, or the greateſt part of it, of that religion, is very rarely to be ſeen; at leaſt this was actually the caſe in October, 1784.

teſtants of the Palatinate, on the contrary, have been obliged to ſeek their fortunes abroad*; and their number

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* The ſufferings of the Proteſtants, on account of their religion, in the Catholic countries, are ſo diſgraceful to humanity, that they almoſt appear incredible. The miſeries recorded by hiſtorians, which were occaſioned by the repeal of the Edict of Nantz, in France, are ſufficiently known; but the calamities ſuffered in Germany, though leſs known, have been no leſs ſhocking and diſgraceful to thoſe who cauſed them. Thouſands of Proteſtants have emigrated from the Palatinate alone, many of whom fled to America, where they ſtill form a numerous and reſpectable body. But this is not the only country in Germany where the Proteſtants have been obliged to leave their homes, and ſeek their fortunes abroad. In the year 1731, no leſs than thirty thouſand emigrated from the Biſhoprick of Salzburg, or were rather driven from their native country, without any other reaſon being given, than becauſe they were Proteſtants. The edict was iſſued in November, and only fourteen days allowed for their departure. At the expiration of the time, the ſoldiers drove them in troops from the towns and villages. The greateſt part of them were ſuffered to take nothing with them, except the cloaths upon their backs, although many were poſſeſſed of conſiderable property. Remonſtrances were made to the Emperor and Archbiſhop on the ſubject, both by the Proteſtant body, and ſeveral foreign powers, but in vain. The King of Pruſſia, as ſoon as he heard of their cruel fate, gave them a general invitation to occupy the waſte countries of Pruſſia, where no leſs than ſeventeen thouſand of them actually ſettled. Subſcriptions were immediately opened in all the Proteſtant countries; London alone raiſed upwards of thirty-three thouſand pounds; Holland, Denmark, and all the Proteſtant countries and cities in Germany, were proportionately liberal. The accounts given by ſeveral writers, of the reception they met with in the different places they paſſed through in their route, is much to the honour of their Proteſtant brethren. The firſt troop of them, which accepted of the King's offer to ſettle in Pruſſia, amounted to

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number therefore has decreafed in the fame proportion as the Catholics have increafed. Such calamities as thefe, continued through feveral reigns, muft certainly

to three thoufand, who were provided with paffports, and protected as his fubjects. They began their journey in the middle of the winter. At Augfburg, an Imperial city of the mixed religion, the Catholic magiftrates refufed them admittance, and fhut the gates of the city againft them ; at laft, however, the Proteftants prevailed, and lodged them in their houfes. In the countries of Anfpach, Bayreuth, and Saxony, they were treated with the greateft benevolence : indeed, their diftreffes, their orderly behaviour, and the caufe of their fufferings, feemed to attract univerfal pity. Many Princes even opened their houfes, and received hundreds at a time to their tables, thinking it an honour to have it in their power to be kind to fo many poor people, who were fo unjuftly perfecuted. The Count of Stollberg-Wernigerode gave upwards of nine hundred of them a comfortable dinner in his palace. In many places, carriages were provided for the fick, the aged, and the children. The Duke of Brunfwick ordered them to be treated in the moft liberal manner ; the fick were provided with wholefome medicines, and their other neceffities relieved. In moft of the towns which they went through, they marched in regular order, and ufually attended divine fervice in the churches, where the Clergy adapted their fermons to the occafion, and raifed a fubfcription to fupply their wants. A letter from Leipfic gives the following account of their arrival : " We have juft been witnefs " to one of the moft affecting fcenes imaginable. Upwards of " two thoufand Proteftant emigrants, driven from their homes, " and deftitute of the common neceffaries of life, have fought " fhelter within our hofpitable walls. As foon as the news of " their approach arrived, at leaft ten thoufand of the inhabitants " went out to meet them. The weary pilgrims were of all ages " and defcriptions : the healthy and fick, women labouring with " child, and infants hanging at the breaft, folicited the pity of " a weeping crowd. Some were bent with age, and fupported by

tainly have totally altered the ſtate of the country; ſo that the Palatinate no longer reſembles its appearance in former times. CHAP. VI.

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" by their children; others had prattling infants in their arms, " who were ſtrangers to their miſery, and innocently told their " little tales, pleaſed with every object they had met with. The " money that was given them ſeemed but a bauble to play with; " while others were almoſt dead with hunger and fatigue. They " were met at the gates by the Clergy, and entered the city in a " regular proceſſion, ſinging one of Luther's hymns. In the " market-place they halted, and were quartered by the Magi- " ſtrates in the different inns, and other houſes of the town; for " every family ſeemed to vie with each other in hoſpitality and " benevolence. On Sunday they aſſembled in the church, and " a collection was made at the doors. Many of the rich mer- " chants ſubſcribed a thouſand dollars each. There was ſcarcely " a ſervant, or an apprentice boy, who did not contribute " his part; and even the women took the handkerchiefs from " their necks, and their aprons, to give to the grateful wanderers. " Their departure was ſtill more affecting: the citizens con- " ſidered them as friends, with whom they were to part, to meet " no more. Each of them gave ſome token of remembrance; " and provided them with bibles, clothes, and even waggons " to carry the ſick and helpleſs." The accounts from the other towns are nearly ſimilar. At Halle, a lady who heard the ſermon at the church, took a gold necklace from her neck, and put it, with all the money in her pocket, into the plate at the church-door. At Wittenberg they were received with every mark of honour: the Univerſity went out to meet them, and the Rector addreſſed them in a manner ſuitable to the occaſion. The inhabitants received them at their tables, and made collections, not only in their churches, but from houſe to houſe. " Our poor gueſts," ſays a Wittenberg Profeſſor, " whom we thought it an honour to re- " ceive where Luther firſt preached the doctrines for which they " are obliged to abandon their native homes, have experienced

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It muſt have been but a mournful conſolation for the Palatine Proteſtants, when they ſaw that the ſame Monarch, to whom they were indebted for the flames which overſpread their country, and conſumed to aſhes the houſes which ſheltered them, in January and February 1689, and who was the author of the clauſe in the Treaty of Ryſwick, rendered millions of their fellow-chriſtians, who were of the ſame perſuaſion, miſerable in his own dominions, and obliged the greateſt part of them to abandon their native country. This circumſtance, however, many of the States

" the greateſt hoſpitality. The ſtudents have contributed all they " had to their relief; and many of them have ſcarcely left themſelves a coat, or change of linen. The whole town and Univerſity, when they went away, attended them as far as the river " Elbe, where they joined with them in prayer and ſinging; " the young Noblemen even took the infant children in their arms, " kiſſed them, ſhook hands in the moſt friendly manner with the " reſt, and parted from them with tears." When they paſſed through Potzdam, his Pruſſian Majeſty came out to ſee them. As ſoon as the Salzburg emigrants beheld their benefactor, they could no longer be prevailed upon to keep their uſual order, but flocked around his perſon; the orphan children hung about his knees, kiſſed his hands and cloaths, and many fell at his feet with gratitude. The King immediately ordered them to be quartered at the inns, and to be provided with comfortable food, and whatever elſe they ſtood in need of, at his own expence. At Berlin, and all the other places they went through, they met with a reception equally hoſpitable; and in Pruſſia, where they ſettled, they were indulged with their full liberty, and provided with every thing neceſſary for their eſtabliſhment and future welfare.——J. G. SCHELHORN, *De Religionis Evangelicæ in Provincia Saliſburgenſi Ortu, Progreſſu, et Fatis.* Leipſic, 1732. Acts of the Emigration of the Salzburghers. Leipſic, 1732.

States of Germany made the moſt profitable uſe of, by means of the refugees from France, whom they received into their countries, where they introduced new trades, and eſtabliſhed manufactories; ſo that frequently new villages, and even towns, were built for the purpoſe; which has certainly contributed to the improvement of ſeveral parts of Germany. CHAP. VI.

With reſpect to the above-mentioned pretenſions of the Dutcheſs of Orleans, which were, nominally at leaſt, the firſt occaſion of the war which the Treaty of Ryſwick terminated, they were ſo far certainly not void of foundation; as, according to the right of ſucceſſion, eſtabliſhed by the cuſtom of ages, in the Houſes of the Princes of Germany, a daughter, ſo long as her brothers are living, can claim nothing but her dowry; but when, by the death of a brother, the male line of a family is extinct, and the territories devolve to a relation of another branch, in that caſe the daughter, ſiſter, or other neareſt female relation of the ſame branch, has a right to all the perſonal inheritance of the line that is extinct *. In caſes of this nature, a diſtinction muſt always be made between the perſonal inheritance, and hereditary dominions; in the ſame manner as, according to the feudal laws, a ſimilar diſtinction is generally made between feudal and perſonal property. Under the above name, a claim may very juſtly be made upon the ſums remaining of the revenues of the domains, at the time of the death of a perſon deceaſed, as well as upon all

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* Vol. I. p. 16.

moveable effects, which cannot be confidered as annexed to the dominions. Difputes however may very eafily arife, in determining how far the limits of fuch a claim extend; becaufe the decifion of this queftion does not depend fo much upon pofitive laws, as on the rights of cuftom and ufage.

In this refpect, however, the demands of the French, that the next relation to the Houfe fhould only inherit what was properly feudal, and their pretenfions to whole tracts of land merely on this account, becaufe they were not feudal, but allodial, were certainly too exorbitant; fince, according to the cuftom of the Princely Houfes of Germany, the right of inheritance equally refpects the ancient family eftates, as thofe that are held as fiefs. The general practice is to compound for the perfonal inheritance by an adequate fum of money; and this was the end likewife of this affair. In the Treaty of Ryfwick, it was referred to be compromifed by the Emperor and the King of France, and to the Pope at all events, as arbiter. After a dubious award, given April 26, 1701, in the name of the two Monarchs, by the Aulic Counfellor Frederick Binder, and Ulric Obrecht Prætor of Strafburg, a fentence from the Pope, February 17, 1702, decided that the Elector Palatine fhould be at liberty from all further claims, upon the payment of three hundred thoufand fcudi *.

Another difpute arofe at firft with the Houfe of Palatine-Neuburg itfelf, concerning the fucceffion to the

* Crowns.

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the Electorate, which was ſupported likewiſe by the King of France. It happened, that at the time when the Elector Charles died, in the year 1685, among the other Princes of the Palatine Houſe, the Count Palatine Leopold Lewis, of Veldenz, was a degree nearer related to the late Elector, than Philip William, Count Palatine of Neuberg. This circumſtance, if only the Roman law had prevailed, would have given him an undoubted precedency; but, according to the right of primogeniture, the principle alone was valid, that no younger ſon can ſucceed to the inheritance ſo long as an elder remains, or any of his deſcendants. By virtue of this, no degree of perſonal conſanguinity can come into conſideration; but the eldeſt branch, as long as any part of it exiſts, has a right to precede the younger. This lineal ſucceſſion was more fully explained, in ſeveral writings which were publiſhed on this occaſion, than it had ever been before; by which the ſcruple which at firſt aroſe upon the ſubject, Whether, according to the Golden Bull, among three brothers, the eldeſt of whom was Elector, and the ſecond died before him, the third brother, or the ſon of the ſecond, ought to ſucceed? appeared to be wholly removed. Notwithſtanding there were two inſtances to the contrary of this in the fourteenth century *, yet at preſent no one entertains a doubt but that the ſecond brother's ſon has a right of inheritance, in preference to the third brother.

* Vol. I. p. 277.

CHAPTER VII.

Various other Caſes of Succeſſion. 1685—1697.

Extinction of the Houſe of Palatine-Veldenz—Several branches of other Houſes extinct, as the line of Altenburg, and Jena in the Houſe of Saxony, and that of Güſtrow in the Houſe of Mecklenburg—The latter not only occaſions a diſpute concerning the ſucceſſion, but a diſpute likewiſe between the Emperor and ſummoning Princes of the Circle of Lower Saxony, on account of the execution—Convention between Mecklenburg-Schwerin and Strelitz, concerning the Güſtrow ſucceſſion—Other diſputes concerning the ſucceſſion to Oldenburg and Delmenhorſt—Rupture between Denmark and Holſtein-Gottorp, on account of Sleſwic—Claims of the Elector of Brandenburg upon Liegnitz, Brieg, Wohlau, and upon Jägerndorf—Settled by convention—Extinction of the Houſe of Saxe-Lauenburg, and the diſputes it produced concerning the ſucceſſion.

THE Count Palatine Leopold Lewis, who at firſt conteſted the ſucceſſion to the Electorate with the Elector Philip William, died afterwards, September 29, 1694, and was the laſt of the line of Veldenz. This occaſioned a warm diſpute concerning the ſucceſſion among the other relations of the Palatine Houſe, which was firſt terminated by a convention in the year 1733.

One circumſtance which now became more remarkable than ever was, that, owing to the right of primo-

primogeniture being gradually introduced into most of the Houses, no State of any importance was further divided into several reigning branches; and the countries belonging to those that were extinct, more frequently reverted to those which survived. Thus, in the Palatine House, not only the lines of Simmern and Veldenz became extinct; but in the House of Saxony likewise, the line of Altenberg, which became extinct April 14, 1672, was united to the line of Gotha; and the line of Jena, which became extinct November 4, 1690, to that of Weimar and Eisenach.

In the House of Mecklenburg, the line of Güstrow became extinct by the death of the last Duke, Gustavus Adolphus, October 26, 1695. A dispute arose concerning the succession to his territories, between Frederick William, who was then Duke of Mecklenburg-Schwerin, and Adolphus Frederick II. Duke of Mecklenburg-Strelitz. The former claimed the reversion of the whole, according to the right of primogeniture: the nearness of consanguinity was in favour of the latter; and he pretended, that, in conformity to the will, the inheritance ought to be equally divided. This dispute was on the point of producing greater troubles, and being the cause of an open rupture between the Imperial Court and the Courts of Berlin and Stockholm.

The Emperor had commissioned the Count of Eck, his Envoy to the Circle of Lower Saxony, to put the

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Duke of Mecklenburg Schwerin in poſſeſſion of Güſtrow, in purſuance of a decree of the Aulic Council. The Courts of Stockholm and Berlin, as well as the Houſe of Brunſwick, conſidered this as an infringement of the right of execution, which properly belonged to them alone, as the ſummoning Princes of the Circle. They diſplaced, therefore, Duke Frederick William from the poſſeſſion of Güſtrow by force of arms; and Lieutenant-colonel De Klinkenſtröm, in the Swediſh ſervice, even ordered a couple of grenadiers to carry the Count by force out of the palace at Güſtrow, in a chair. The Miniſters of the above-mentioned Courts, in conſequence of this, were actually forbid the Court at Vienna; but the breach was made up by a particular addreſs to the Emperor, in which an apology was made for the inſult, by ſaying, that it was done without orders from the Court.

The conteſt concerning the ſucceſſion was afterwards decided between the two Houſes of Mecklenburg-Schwerin and Strelitz, by an agreement, March 8, 1701, that the Duke of Strelitz ſhould reſign his pretenſions to Güſtrow; but that he ſhould obtain, in return, the Principality of Ratzeburg, with a ſeat and voice at the Diets of the Empire and Circle, together with the diſtrict of Stargard, the Commanderies of Mirow and Remerow, beſides an annual payment of 9000 dollars out of the toll at Boitzenburg. The right of primogeniture was on this occaſion renewed

likewiſe

likewise in the line of Schwerin, as well as that of Strelitz. CHAP. VII.

There were still some disputes concerning succession in various other Houses, which were not decided. In the House of Holstein, a dispute had continued ever since the year 1667, concerning the hereditary dominions of the last Count of Oldenburg, deceased. His natural son Anthony Gunther, Count of Oldenburg, who was legitimated, acquired the possession of the Seigniories of Kniphausen and Vaxel (which, since that period, have devolved by his grand-daughter to the Counts of the House of Bentink *. The Seigniory of Jever, which the last Count of Oldenburg was in like manner in possession of, devolved to his nephew Prince John, of Anhalt-Zerbst, whose great-grandson, the present Prince of Zerbst, still possesses it. Oldenburg and Delmenhorst, however, were contested by the Duke of Holstein-Ploen with the King of Denmark and the House of Holstein-Gottorp. The latter suffered the countries to be taken possession of in his name, and appealed to a promise of reversion granted by the Emperor, to a stipulation entered into with the party deceased, as well as to his will. The Duke of Ploen appealed likewise to a promise of reversion, and to his proximity of blood: and he had also the Imperial Court on his side.

The House of Holstein-Gottorp was at that time on good terms with Frederick III. King of Denmark,

* Ancestors of the present Duke of Portland in England, and the Counts of Bentink in Holland.

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mark, as the former contests concerning the independence of the Dutchy of Sleswic were decided in 1658, and a new Convention concluded October 12, 1667, at Gluckstadt. But this Christian V, who succeeded to the Crown, took possession of the Dutchy of Sleswic in the year 1675, and broke likewise with Holstein-Ploen, in order that he might keep possession of the whole of Oldenburg and Delmenhorst. In the peace which Denmark was obliged to submit to by the Treaty of Nimeguen, September 2, 1679, a full restoration was promised to the House of Gottorp; but in May 1684, Christian V. united the Dutchy of Sleswic again to the Crown of Denmark by a public act; and this was afterwards one of the principal objects of contention which occasioned the northern war that broke out between Denmark and Sweden in the year 1700.

A claim made by the Elector Frederick William of Brandenburg, on account of a fraternal compact of inheritance concluded in 1537, upon the Principalities of Liegnitz, Brieg, and Wohlau, in Silesia, which the Emperor had taken possession of on the death of the last Duke, November 21, 1675, was decided May 7, 1686, in consequence of an alliance formed at that time between those two Courts, with this agreement; that the Elector should not only resign his present pretensions, but an ancient claim likewise to the Principality of Jägerndorf, which was seized in the thirty-years war, when the Margrave John George was put to the ban of the Empire; in con-

consideration of which union, the Emperor ceded to the Elector the Circle of Schwibus: but in consequence of a protest, which the Elector Frederick, who succeeded, had privately made when he was hereditary Prince, this agreement was so far dissolved, December 10, 1694, that the Emperor received the Circle of Schwibus back again for a hundred thousand dollars; and this very circumstance was afterwards the cause of the Silesian war, which Frederick II. commenced in 1740, to enforce his claims.

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At last, another contest arose concerning the succession to the Dutchy of Saxe-Lauenburg, which, on the decease of the last Duke, September 19, 1689, was taken possession of, September 30th, by George William, Duke of Brunswick-Zelle, partly as Colonel of the Circle, and Sequestrator, and partly on account of some claims of his own House. An instance has seldom occurred, where so many pretensions have been made to a single object. The Electoral House of Saxony appealed to a promise of reversion in 1507, and to a compact of inheritance in 1671. The Saxon Dukes of the Ernestine line contested the priority of right with the House of the Elector. The Princes of Anhalt asserted their claims as relations of the House, and by virtue of an hereditary alliance. The latter pretension was made likewise by the Dukes of Mecklenburg. Other claims were made by two daughters of the deceased Duke, one of whom was married to Philip William, Count Palatine of Neuburg; the other, to Lewis William, Margrave of Baden; as well

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as by a Dutchess of Holstein-Sonderburg, daughter of the deceased Duke's uncle; and at last the King of Sweden laid a distinct claim to the district of Land-Hadeln, in behalf of the Dutchy of Bremen. The House of Brunswick had never resigned its right to these dominions, which had been seized from Henry the Lion; on the contrary, two Dukes of Brunswick, William and Magnus, had entered into a new compact with Duke Erich, of Saxe-Lauenburg, in 1369, that in case the male line of Lauenburg should become extinct, the country of Lauenburg should devolve to the House of Brunswick. A convention was entered into, in the year 1697, with the Elector of Saxony, by which that House ceded its claims to the House of Brunswick; but it was not till 1716, that the House of Brunswick was invested with this fief by the Emperor.

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CHAPTER VIII.

The House of Saxony divided into other Branches, and several new Princes. 1685—1697.

The number of reigning Houses reduced by the successions according to the right of primogeniture, though several new lines arise in the House of Saxony—The additional branches of Weissenfels, Merseburg, and Zeiz, in the Electoral House—In the Ducal House, Gotha, Coburg, Meinungen, Römhild, Eisenberg, Hilburghausen, and Saalfeld—Several Counts created Princes—Some new Princes obtain a seat and voice in the College of Princes, at the Diet.

IN the various cases of succession which had lately frequently occurred, though the suffrages at the Diet, which those Houses, or lines of a family that were now extinct, had been in possession of, remained as they were fixed in the year 1582 (*a*); yet the number of reigning Houses was thereby prodigiously reduced, and could not so easily be augmented again now, as it formerly could, when a division of the countries was much more usual than a succession according to the right of primogeniture. Among the great Houses, that of Saxony afforded the only instance of a new division into several lines. This was done in the two principal lines of the House, viz. in the Albertine, which was now the Electoral, as well as in the Ducal, or Ernestine line.

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(*a*) See Page 16.

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The Elector John George I. of the Albertine line of the House of Saxony, made a will in the year 1652, and added a codicil to it in 1653, in which he was certainly assisted by a lawyer biassed in favour of the principles of the Roman law. It required however no small degree of art, to establish the right of primogeniture, and yet observe in a moderate degree the system of succession of the Roman law, which is so thoroughly contradictory to its principle. The introduction therefore was so expressed, that although the Elector constituted each of his sons *(honorabili institutionis titulo)* his heirs, and actually allotted each of his younger sons a certain district of land, it was in such a manner, that the part of the heritage allotted to the younger sons did not answer the designs of the common law, and the divisions were unequal to each other; and yet no contests should arise among themselves, upon a pretence of completing their hereditary possessions; nor should they, on that account, have any concern with the Electoral Princes, particularly with respect to the prodigious debts of the Electoral domains, the great burthens annexed to the Electoral dignity, &c. (*a*)

The result of the above ordinance was, that on the death of John George I. October 8, 1656, the eldest of his four sons, John George II. succeeded to the Electorate, and all the principal dominions of the Albertine line: the other three were allotted a certain district

(*a*) Lunig's Imperial Archives, Part. Spec. § iv, p. 169, &c.

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diſtrict of land, ſo that they were enabled to marry ſuitably to their rank, and form again three different lines, one at Weiſſenfels, another at Merſeburg, and the third at Zeiz. All theſe three branches however again became extinct, in the ſecond or third generation: that of Zeiz, in 1725; that of Merſeburg, in 1738; and Weiſſenfels, in 1746; ſo that, in the whole Albertine line, the Elector has now united again all the dominions of the above Houſes under his own government, and is at preſent the only reigning Prince.

In the Erneſtine line of Saxony, the excellent Duke Erneſt* the Pious, of Gotha, reſigned the government to his ſeven ſons, during his life-time, with the intention that all the ſeven ſhould continue to poſſeſs the government in common. This however did not laſt after his death, which followed in 1675, longer than the year 1680, when they again divided in ſuch a manner, that each of them had his own reſidence, and married ſuitably to his rank. Thus ſeven reigning Dukes eſtabliſhed themſelves at Gotha, Coburg, Meinungen, Römhild, Eiſenburg, Hildburghauſen, and Saalfeld. Nothwithſtanding this, the votes at the Diet were not augmented; but in all theſe branches there remained only the votes which

* Duke Erneſt the Pious was one of the greateſt characters of the age in which he lived, equally renowned for his underſtanding, piety, and valour. He died at Gotha, in the year 1675. For the intereſting particulars of his life, ſee Philipps's Life of Erneſtus the Pious, firſt Duke of Saxe-Gotha. London, 1750.

BOOK IX. which had been already introduced in the College of the Princes, viz. Coburg, Gotha, and Altenburg. After a variety of diſputes, another diviſion took place, in conſequence of new ſtipulations, particularly in the year 1735; though no leſs than 206 decrees of the Aulic Council had been paſſed upon the ſubject, and the Houſes were eſtabliſhed as they are at preſent, of Gotha, Meinungen, Hildburghauſen, and Coburg-Saalfeld. Since that period, the right of primogeniture has been introduced in each of the above Houſes, except that of Meinungen, where it has not yet taken place. It was introduced at Gotha, ſo early as the year 1685, by Duke Frederick (*a*).

In the mean time the Imperial Court took care that there ſhould be no ſcarcity of new Princes. The Houſe of Fürſtenberg, which had formerly only the rank of Counts, was raiſed to that of Prince, by the Emperor Leopold, May 12, 1664; John Adolphus, Count of Schwartzenberg, July 14, 1670; Albert Erneſt, Count of Oettingen, October, 1674; George Frederick, Count of Waldeck, July 16, 1682; Eugene Alexander, Count of Thurn and Taxis, 1686; the Counts of Naſſau-Saarbruck, Uſingen, Idſtein, and Weilburg, Auguſt 4, 1688; and the Counts of Schwartzburg-Sonderſhauſen, September 3, 1697. But, of all theſe, none were admitted in the College of the Princes, at the Diet, except Fürſtenburg, together with Eaſt Frieſland, September 6, 1667; and Schwartzen-

(*a*) Galletti's Hiſtory of the Dutchy of Gotha, Vol. I. p. 309.

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Schwartzenberg and Waldeck afterwards, August 22, 1674. Even the Princes of Dietrichstein, who were conditionally promised to be introduced into the College of Princes so early as the year 1654, did not obtain the actual exercise of that privilege till October 4, 1686, when the Emperor Leopold declared the Seigniory of Trasp, which belonged to that family, free from the territorial sovereignty of Tyrol, to which it had hitherto been subject, that it might be reckoned as a country immediately held as a fief of the Empire.

CHAPTER IX.

The Ninth Electorate erected in favour of the House of Hanover. 1692—1708.

Origin of the Ninth Electorate in favour of Hanover, and restoration of the Electorate of Bohemia—Difficulties and opposition which obstructed it, which were at last removed, and the affair accomplished; with the assurance that no new electorate should be erected in future, without the general consent of the Empire; and that, if there should be four Protestant Electors on the extinction of the House of Bavaria, the Catholic Electors should have a supernumerary vote.

AS Leopold, in imitation of his predecessors, had added new Princes to the Empire, and the way was already broken by the erection of an eighth Electorate,
A. C. 1669. during the former reign, no reason could possibly be given, why a ninth Electorate should not be erected at present. And what House could have a more equitable claim to the honour, than that, whose ancestors had been in possession of two Dutchies already, besides the Electoral dignity; and which, though after a contest of so many years it appeared to be irrecoverably lost, yet had always continued immediately attached to the Electoral Houses, and had in many respects performed the most essential services for its paternal country, and for the common head of the Empire in particular?

When

When Joseph I. was elected King of the Romans, the Emperor took the opportunity of proposing to the Electors, then assembled at Augsburg, in 1690, the erection of a ninth Electorate in favour of Ernest Augustus, Duke of Hanover, and his successors; and at the same time made another proposition, that the Kingdom of Bohemia should be fully restored to its Electoral rights, which it had been gradually deprived of, in order to preserve the religious proportion hitherto subsisting among the Electors. CHAP. IX.

After two treaties concluded on this subject by the the Emperor, with the Courts then resident at Zelle and Hanover, his Imperial Majesty publicly announced the affair to the Electors, May 27, 1692; and on the 19th of December conferred the investiture of the new Electorate on the Barons Otho de Grote and Christopher de Limbach, the Hanoverian Plenipotentiaries at Vienna. In consequence of this, one opposition after the other arose, even from the Electors of Treves, Cologne, and the Palatinate, against the new Electorate. It was still more opposed by most of the members of the College of the Princes, and even by the House of Brunswick-Wolfenbuttel. Such was the general aversion to the measure, that most of the ancient Houses of the Princes, and several ecclesiastical States, entered into a particular union, under the name of "the corresponding Princes against the new Electorate." The House of Würtenberg in particular, which was one of the number, complained that the office of Arch-standard-

 bearer

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bearer of the Empire, which was their right already, was conferred as a new Imperial office on the new Elector.

At the Congreſs of Peace, at Ryſwick, the Envoy from the Elector of Brunſwick was acknowledged as ſuch by the foreign Powers, although ſeveral of the States who differed in their ſentiments, warmly proteſted againſt it: in the Treaty itſelf, the affair was not taken notice of. The Elector, Erneſt Auguſtus, died January 28, 1698, when his eldeſt ſon, George Lewis, ſucceeded, and received the inveſtiture again, with the Electoral dignity, through his Miniſter, M. de Huldenberg; and the Electors of Treves, Cologne, and the Palatinate, withdrew their proteſts. The oppoſition of the Princes, on the contrary, was ſtill more violent: they not only renewed their union at Goſlar, February 5, 1700, againſt the ninth Electorate, but entered into a league, July 19th the ſame year, at Nurenberg, to bring a combined army of 24, and, if it ſhould be neceſſary, 48,000 men, into the field, to oppoſe it.

On the other ſide, the affair received no inconſiderable additional weight, by an act which was paſſed in the Engliſh Parliament, at London, June 12,
C. 1701. 1701, eſtabliſhing the ſucceſſion of the throne of England, in favour of Sophia, the widow of the Elector Erneſt Auguſtus (whoſe mother, a daughter of King James I. was the conſort of Frederick the unfortunate Elector Palatine), and her Proteſtant

ſucceſſors

ſucceſſors of the Houſe of Hanover; which was confirmed by a ſecond act of parliament, October 25, 1705. Soon after this, Duke Anthony Ulric, of Brunſwick-Wolfenbuttel, was reconciled to the new Electoral Houſe; and when the Elector of Bavaria was put to the ban of the Empire, April 29, 1706, and the Elector Palatine, in conſequence of this, was reſtored to the fifth place, which he formerly enjoyed among the Electors, and recovered alſo the office of Arch-ſteward of the Empire, a reſolution was paſſed at the Diet, June 30, 1708; for the introduction of the new Elector of Brunſwick, as well as the re-admiſſion of Bohemia. This was actually accompliſhed September 7, 1708; upon which the Elector of Brunſwick was inveſted with the office of Arch-treaſurer of the Empire, April 2, 1710. A.C. 170

The Emperor had declared, in a Commiſſorial decree, which was promulgated July 21, 1706, that "in future no new and additional Electoral dignity ſhould be conferred without the general conſent of the Empire; and that this decree ſhould be incorporated in the next Receſs, and have the force of a fundamental law of the Empire."

A ſingular idea now aroſe on the ſide of the Catholics, that although the former proportion of the two religions was at preſent properly adhered to, by the re-admiſſion of the kingdom of Bohemia to the Electoral dignity, when the new Electorate was created for Brunſwick, yet the caſe might poſſibly occur

 hereafter,

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hereafter, when the Palatine Houſe of Neuberg was extinct, that a Proteſtant Elector of the branch of Deux-Ponts, or of ſome other Palatine line, might ſucceed to the Palatinate. If the Houſe of Bavaria, as it was now, ſhould then likewiſe be under the ban, or if, on the extinction of the Guillielmine male line of Bavaria, the Palatine Houſe ſhould be in poſſeſſion of the Electorate alone—in that caſe, among the eight Electors, four would be Catholics and four would be Proteſtants. This indeed would be nothing more than a happy equipoiſe of the two religions, as there actually had been already, at the time of the religious Peace in 1555; and Germany was not in any reſpect the worſe for it. But that ſuch a circumſtance as this might not occur again, a condition was made on this occaſion, and inſerted in the reſolution of the Empire, June 30, 1708; that in caſe there ſhould be no Catholic heir of the Palatine houſe, but that Electorate ſhould devolve to an adherent to the Confeſſion of Augſburg, and the Electorate of Hanover be ſtill in being, the preſiding Catholic Elector ſhould then have a ſupernumerary vote. It certainly would always have been poſſible for this caſe to have happened, if the Princes of the branches of Deux-Ponts and Birkenfelds, to whom the ſucceſſion to the Palatine Electorate may ſtill devolve, had not deſerted the Proteſtant cauſe, and embraced the Catholic religion.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL.

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CHAPTER X.

Religion of the States of the Empire, and their Votes at the Diet; particularly when Proteſtant States have become Catholics.

The various changes in the religion of the States which had already taken place, and ſtill continued, afford matter for ſerious conſideration—A chronological table inſerted of forty-one inſtances—Difference between theſe caſes and the changes which took place in religion, during the ſixteenth century; their peculiar circumſtances and conſequences—The Palatine Houſe of Neuberg, which embraced the Catholic religion, an inſtance of the advantages of providing for younger ſons with eccleſiaſtical preferment and religious foundations, which, by virtue of the Eccleſiaſtical reſervation, could be only in the poſſeſſion of Catholics, as well as what thoſe countries which had hitherto been Proteſtants might expect from Sovereigns who became Catholics, or from ſucceſſors who were of that perſuaſion; to whoſe real advantage all theſe circumſtances tended—With reſpect to the votes at the Diet likewiſe, every State, ſince the diviſion, attached to thoſe who were of his own religion—It ſeemed but juſt that a Sovereign, when he became a Catholic; or a Catholic ſucceſſor, whoſe territories had been Proteſtant before, ſhould adhere to the Catholic party—In the former caſe, the Sovereign and his dominions were of the ſame religion; but now merely the perſon of the Sovereign was to be conſidered: whereas in equity, the country ought to come into conſideration likewiſe, eſpecially as the States no longer perſonally attend, but ſend their Envoys to the Diet—With reſpect to the mixed Imperial cities, as Augſburg, and ſuch countries as Oſnabruck, the vote might be of the two religions alternately; but not in ſuch caſes where the change of religion

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merely respected the person of the Sovereign—With regard to the Collegiate votes, the chief consideration was the majority of the members; so that the Prelates and Counts of Swabia were reckoned as Catholics, and the Counts of Wetteravia, Franconia, and Westphalia, as Protestants—Another singular question, concerning the direction of the Circle of the Upper Rhine, whether both the summoning Princes of that mixed Circle, viz. Worms and the Palatinate, could be Catholics?—At last, when the Elector of Saxony became a Catholic, he gave an assurance, that there should be no alteration on that account, either in the religion of the country, or at the meetings of the States—Towards the end of the seventeenth century, the distinction of the two Calendars, which had hitherto subsisted among the two parties of religion, removed.

A FEW general historical remarks, of great importance, may be made in this place, on the state of religion in those countries of which the Sovereigns have a vote at the Diet, and on the changes which have taken place since the Peace of Westphalia. With this view, perhaps, it may not be altogether useless to insert a chronological table of the revolutions which have happened in the Houses of the Princes and Counts of Germany, by their changing from the Protestant to the Catholic religion. I have marked, as far as I could discover it, first the year when each of these changes took place, and afterwards the name, age, and other pertinent circumstances which may afford matter for every one's reflection; and, for greater convenience, I have added references to Hübner's Genealogical Tables, where all the circumstances relative to the families of the persons mentioned may be found.

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CHAP. X.

A Chronological Table of the Religious Changes in the Houses of the States of the Empire, during the seventeenth and eighteenth Centuries.

I. 1614. Wolfgang William, Count Palatine of Neuberg, born 1578, (at the age of 36); died 1653; married, 1613, to Magdalen of Bavaria (HÜBNER, Table 140). His son, Philip William, born 1615, was educated a Catholic, married 1642, to a Polish Princess, was reigning Count Palatine of Neuberg, 1653, and succeeded to the Palatine Electorate 1685.

II. 16 . . John the younger, Count of Nassau-Siegen, born 1583—age . . —married, 1618, to a daughter of the Prince de Ligne, in the French and Spanish service; died 1638. His issue, by an equal marriage and legitimate heirs, became extinct in the person of his grandson, William Hyacinth, 1713.—HÜBNER, Tab. 257.

III. 16 . . Bruno III. Count of Mansfeld, born 1576—age . .—married, first, to a Spanish lady, and afterwards, 1636, to a Countess of Törring; died 1644. His son was created Prince.—HÜBNER, Tab. 260.

IV. 1629. John Lewis, Count of Nassau-Hadamar, born 1590—age 39—raised to the rank of Prince,

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Prince, 16 . . died 1653. His line became extinct in the person of his grandson, Francis Alexander, 1711.—HÜBNER, Tab. 260.

V. 16 . . Julius Henry, Duke of Saxe-Lauenburg, born 1586, had a son by a Princess of Brandenburg, who remained a Protestant, but died in 1666 without heirs. He was married afterwards to a Countess Dowager of Colowrat, born Baroness of Lobkowitz; and by this marriage had a son, Julius Francis, born 1641, who was educated a Protestant; married, 1668, to a Princess of Sulzbach; died in 1689, and was the last Duke of Saxe-Lauenburg. He left an only daughter.—HÜBNER, Tab. 153.

VI. 1630. Francis Charles, Prince of Saxe-Lauenburg, born 1594—age 36—brother of the former; died 1669, without issue.—HÜBNER, Tab. 153.

VII. Rudolphus Maximilian, another Prince of Saxe-Lauenburg, and brother of the two former, born 1695; died 1647, unmarried.—HÜBNER, Tab. 153.

VIII. 1631. John Diederich, Count of Löwenstein-Wertheim of Rochefort, born 1548—age 47. His consort was a Countess of the Mark. Married 1610, died 1626. From him descended the present Princes of Löwenstein. — HÜBNER, Tab. 369.

IX.

IX. 16.. Alexander Henry, Prince of Holftein-Sunderburg, born 1608, entered into the Emperor's fervice; died 1667; married to Efther, daughter of a Court Chaplain, by whom he had two fons, who died Canons of Breflau and Olmutz.—Hübner, Tab. 220.

X. 16.. Chriftian Aribert, a fon of Prince George Aribert, of Anhalt-Deffau, by his unequal marriage with a lady called De Krofigk, born . . . was created Count of Bäringen, and entered into the Emperor's fervice; died 1677, unmarried.—Hübner, Tab. 236.

XI. 1636. Frederick, Prince of Heffe-Darmftadt, born 1616—age 20—was Cardinal 1652, and Bifhop of Breflau 1673; died 1682.—Hübner, Tab. 211.

XII. 1651. John Frederick, Duke of Brunfwick-Luneberg, of Hanover, born 1635—age 26—married, 1667, to a Catholic Palatine Princefs, died 1676: he left two daughters, one of whom was married, in 1699, to the Emperor Jofeph.—Hübner, Tab. 191.

XIII. 1652. Erneft Landgrave of Heffe-Rheinfels, born 1623—age 29—died 1693. His fons were educated Catholics, and founded the two lines of Rotenburg and Wanfried, which remained Catholics.—Hübner, Tab. 210.

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XIV. 1655. Christian Augustus, Count Palatine of Sulzbach, born 1622—age 33—died 1708; married, 1649, to a Countess of Nassau-Siegen. His son, Theodore, born 1659, was educated a Catholic; and, 1692, married to a Princess of Hesse-Rotenburg.—HÜBNER, Tab. 141.

XV. . . . . . Edward, a brother of Charles Lewis, Elector Palatine, born 1625, died 1663; married, 1645, a daughter of the Duke de Nevers in France. He left three daughters.—HÜBNER, Tab. 139.

XVI. 1663, October 29. Christian Lewis, Duke of Mecklenburg-Schwerin, born 1623—age 40—married, November, 1663, to Isabella de Montmorency-Bouteville; died 1692, without issue.—HÜBNER, Tab. 195.

XVII. 16 . . George Christian, Prince of Hesse-Homburg, born 1626, was in the Spanish and French service; died 1677, without issue.—HÜBNER, Tab. 212.

XVIII. 1667. Lewis Gustavus, Count of Hohenlohe-Schillingsfurst, born 1634—age 33—died 1697. The present Princes of Hohenlohe-Schillingsfurst are his descendents.—HÜBNER, Tab. 600.

XIX.

XIX. 16 . . Christian, Count of Hohenlohe-Bartenstein, born 1627—age . . —married, 1658, to a Countess of Hatzfeld; died 1675. From him descended the present Princely House of Hohenlohe-Bartenstein.—HÜBNER, Tab. 599.

XX. 16 . . Albert, Prince of Saxe-Weissenfels, born 1656—age . .—married, 1687, to a Countess of Löwenstein; died 1692, and left a daughter.—HÜBNER, Tab. 169.

XXI. 1673. Joachim Ernest, Prince of Holstein-Plön of Rethwisch, born 1637—age 36—married, 1677, to a Marchioness of Westerloo; died 1700, at Madrid. His only son, John Ernest Ferdinand, died 1729, without issue.—HÜBNER, Tab. 226.

XXII. 16 . . George, Prince of Hesse-Darmstadt, born 1669—age . . —was Viceroy of Catalonia; died 1705, without heirs.—HÜBNER, Tab. 211.

XXIII. 16 . . Henry, Prince of Hesse-Darmstadt, born 1674, entered into the Emperor's service; died unmarried.—HÜBNER, Tab. 211.

XXIV. 1692. Arnulph Morris William, Count of Bentheim, born 1663—age 29.—His descendants still flourish.—HÜBNER, Tab. 423.

XXV. 1693. Philip, Prince of Heſſe-Darmſtadt, born 1671—age 22—married, 1693, to a daughter of the Duc d'Havré; was appointed by the Emperor, Governor of Mantua; died 1714, and left two ſons.—HÜBNER, Tab. 221.

XXVI. 16.. Erneſt Auguſtus, Prince of Holſtein-Sunderburg of Auguſtusburg, born 1660—age..—was minor canon at Cologne, 1695: he afterwards became a Proteſtant again; and died 1731, without heirs.—HÜBNER, Tab. 221.

XXVII. 1696. Guſtavus Samuel Leopold, younger Prince of Palatine Deux-Ponts, born 1670—age 26—married, 1707, to a Princeſs of Palatine-Veldenz, divorced 1723; was Duke of Deux-Ponts 1718; died 1731, without iſſue.—HÜBNER, Tab. 91.

XXVIII. 1697, May 28. Frederick Auguſtus, Elector of Saxony, born 1670—age 27—elected King of Poland June 27, 1697.—HÜBNER, Tab. 168. He educated his ſon a Proteſtant till 1712, when he privately became a Catholic, and publicly declared himſelf of that religion, 1717.

XXIX. 1697. Frederick, Prince of Heſſe-Darmſtadt, born 1677—age 20—was Canon of Breſlau and Cologne, and General in the Ruſſian ſervice; died 1708, unmarried.—HÜBNER, Tab. 211.

XXX. 17 . . Frederick William, Prince of Holstein-Beck, born 1682—age . . . —married, 1708, to a daughter of a Bavarian General, Count de Sanfree; was a General in the Emperor's service; died 1719, and left an only daughter.—HÜBNER, Tab. 222. CHAP. X.

XXXI. 1710, Anthony Ulric, Duke of Brunswick-Wolfenbuttel, born 1633—age 77—died 1714. His son remained a Protestant.—HÜBNER, Tab. 190.

XXXII. 1712, November 27, privately; October 11, 1717, publicly. Frederick Augustus, Electoral Prince of Saxony, born 1696—age 16—married, 1719, to a daughter of the Emperor Joseph I; was Elector of Saxony and King of Poland, 1733; died 1763.—HÜBNER, Tab. 168. His sons and daughters were educated Catholics.

XXXIII. 1712, October 28. Charles Alexander, Prince of Würtenberg, born 1684—age 28—married, 1727, to a Princess of Thurn and Taxis; was reigning Duke, October 31, 1733; died March 12, 1737, and left three sons.—HÜBNER, Tab. 203.

XXXIV. 17 . . Leopold, Prince of Holstein-Wiesenburg, born 1674—age . . . —married, 1713, to a Princess of Lichtenstein; died 1744, and only left daughters.—HÜBNER, Tab. 223.

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XXXV. 1716. Morrice Adolphus, Prince of Saxe-Zeiz, born 1702—age 14—Canon of Cologne, Bishop of Königgrätz, 1731; and of Leutmeritz, 1733.—HÜBNER, Tab. 171.

XXXVI. 1717, April 18. Morrice William, Duke of Saxe-Zeiz, Administrator of the Bishoprick of Naumburg, born 1664—age 53—became a Lutheran again, October 16, 1718; died November 14, 1718; left only one daughter.—HÜBNER, Tab. 171.

XXXVII. 1723. Charles Lewis, Prince of Holstein-Beck, born 1690—age 33—married, 1730, to a Countess Orselska; died 1774. His son, Charles Frederick, died before him, 1772.

XXXVIII. 1727. Joseph, Prince of Saxe-Hilburghausen, born 1702—age 25—married, 1727, to a Countess Dowager of Althann, born Princess of Pignatelli; died without issue.—HÜBNER, Tab. 165.

XXXIX. 1746, December 8. Frederick, Prince of Palatine Deux-Ponts, born 1724—age 22—married, February 6, 1746, to a Princess of Palatine-Sulzbach; died August 15, 1767. His sons, the eldest of whom became reigning Duke of Deux-Ponts in 1775, were educated Catholics.

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XL. 1746, privately; 1754, publicly. Frederick, hereditary Prince of Heſſe-Caſſel, born 1720—age 29—in 1760 became reigning Landgrave; died October 31, 1785. His Princes remained Calviniſts.

XLI. 1758, February 12. Chriſtian IV, reigning Duke of Deux-Ponts, born 1722—age 36—died 1775, unmarried

XLII. 1769, Auguſt 15. William, Prince of Palatine-Birkenfeld, born 1752—age 17—married, 1780, to a Princeſs of Deux-Ponts.

If the particular hiſtory of all theſe changes of religion were known, and the real motives which occaſioned them; and if the perſons by whoſe means they were brought about, could now be diſcovered; a compariſon well worthy of conſideration might be made between them and the religious changes of the ſixteenth century. Many of them however may be attributed to matrimonial connexions, or elſe the actual enjoyment, or expectation of political advantages. All of them have not been attended with the ſame conſequences; eſpecially when ſuch a change took place in the religious perſuaſion of a younger Prince, or one who was infirm, and had no legitimate iſſue, or when the children were educated Proteſtants, and continued faithful to their profeſſion. But how often has it happened that younger ſons, who, at the time they

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changed their religion perhaps, were not confidered of any confequence, have afterwards become reigning Sovereigns, or tranfmitted to their pofterity the hope of fucceeding! How often has it, by this means, been previoufly contrived, for the fucceffion in the courfe of time to devolve again to a Catholic! And how extenfive is that part of Germany, where the ftate of religion is already totally different from what it was in the year 1624, which, according to the intention of the Treaty of Weftphalia, ought always to ferve as a univerfal and perpetual rule!

With refpect to the advantages which have been generally connected with the above-mentioned changes in religion, the firft cafe of the Palatine Houfe of Neuburg may ferve as a fufficient inftance to place this circumftance in a proper point of view, and prove how very advantageous fuch a change may be to the Houfe, according to the Ecclefiaftical Refervation, which was confirmed by the Peace of Weftphalia, by richly providing for the younger fons and the daughters, with valuable benefices and religious foundations, and even raifing fome of the family to Principalities and Electorates.

The Bavarian Houfe, of the Wittelfbach line, had hitherto enjoyed the advantage of having one of its younger Princes, ever fince the year 1583 until 1760, Archbifhop and Elector of Cologne; and befides this, the fame, or another Bavarian Prince, was often in poffeffion of more ecclefiaftical Principalities,

as

as the Bishopricks of Hildesheim, Paderborn, Freisingen, Ratisbon, Munster, Osnabruck, and Liege: and the two brothers, John William, and Charles Philip, who were of the Palatine House of Neuburg, and succeeded each other in the Palatine Electorate, lived to see one of their younger brothers Bishop of Augsburg; another, Grand Master of the Teutonic Order; and a third, first Grand Master of the Teutonic Order, and at the same time Bishop of Worms; afterwards Elector of Treves, and at last Elector of Mentz (*a*): not to mention that the father of all these Princes, Philip William, Count Palatine, and afterwards Elector, was father-in-law to the Emperor Leopold in the year 1676, by which he became the grandfather of the succeeding Emperor Charles VI. (*b*)

(*a*) Viz. Five of the eight sons of Philip William, who lived to years of maturity, were devoted to the church. One of these indeed died in his twenty-fourth year; and one, viz. Charles Philip, who was afterwards Elector Palatine, laid his cloth aside. Of the others—Francis Lewis was already Bishop of Breslau in the year 1683; Lewis Anthony, Grand Master of the Teutonic Order, 1685; Alexander Sigismund, Bishop of Augsburg, 1690 (he died in 1731). Lewis Anthony was Coadjutor of Mentz 1691, and Bishop of Worms and Liege 1694 (he died May 4, 1694). Francis Lewis was Bishop of Worms, and Grand Master of the Teutonic Order, in 1694, Elector of Treves 1710, and Elector of Mentz 1729 (he died in 1732).

(*b*) Eleonora Magdalena, of Palatine-Neuburg, daughter of Philip William, was the Emperor Leopold's third consort in the year 1676, and in 1685 the mother of Charles VI. She died Empress Dowager 1720.

This example, after what I have already mentioned, may likewiſe ſufficiently prove what a revolution may take place in the ſtate of religion in a country, by the mere perſonal change in the ſentiments of a German Prince, or by a Proteſtant country devolving to a Catholic Sovereign. It is no uncommon thing neither for thoſe who firſt change their religion, to be particularly zealous in their endeavours to make proſelytes; and although theſe perhaps ſhould be unſucceſsful, yet the endeavours of the ſons and grandſons, who are educated in the newly adopted principles, and doubly encouraged, through the zeal and bigoted devotion of their mothers, may not be equally fruſtrated. The hiſtory of the Palatinate at leaſt affords us a proof of this, by the oppreſſions on account of religion increaſing at the commencement of a new reign, as in the years 1690 and 1716.

The ſame example proves how much the ſtate of religion of a whole country may in this manner be changed in the courſe of one or two generations; and if we make ſtill further inquiries, Who is the gainer thereby? we ſhall certainly find, that no inconſiderable advantages were derived by thoſe who had their attention directed to no other object than the dominion of the world, and who employed the principle, that out of the church there could be no ſalvation, and that the welfare of the church was above every other conſideration; to anſwer their private purpoſes. Whether theſe changes in religion have tended to the real advancement of the countries, or

increaſed

increaſed the welfare of the Princes, is another queſ- tion, to which an exact account of the emigrations of the Palatines might here perhaps ſupply the moſt concluſive anſwer*.

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* The number of emigrants from the Palatinate is almoſt incredible. In America, there are whole towns inhabited by people of that country alone. So late as in the year 1765, no leſs than eight hundred were perſuaded to embark to ſeek their fortunes. An adventurer, who promiſed them great advantages in the Britiſh Colonies, perſuaded them to come to England. On their arrival at the Port of London, their conductor ſuddenly diſappeared, and left theſe miſerable and diſappointed wretches with ſcarcely any clothes to cover them, or money to procure themſelves proviſion, and, unacquainted with the language, bewildered in that extenſive Capital. In this unfortunate ſituation they remained ſome days. The neighbouring inhabitants were at a loſs to diſcover the cauſe of their arrival, and did not underſtand the nature of their wants. At laſt, a German Clergyman advertiſed the circumſtance in the papers, and implored the compaſſion of the charitable in behalf of his unfortunate countrymen. In half an hour after the advertiſement was publiſhed, a man on horſeback brought him a hundred pound bank note. Coffee-houſes were immediately opened for ſubſcriptions; attendants were appointed to ſupply them with ſuch neceſſaries, as they themſelves were not able to buy; phyſicians, apothecaries, nurſes, and even interpreters, were employed to render their ſituation comfortable. Perhaps there never was a more generous contribution. There were few people of property who did not aſſiſt, and many gave a hundred pounds at a time. The fugitives were amply relieved, ſupported during five months in the metropolis, and ſent free of expence to America, where they were provided with every thing requiſite for their eſtabliſhment.—Annual Regiſter, London, 1766. Archenholtz's View of England.

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Another circumſtance came now into conſideration, which was not yet ſettled in the fundamental laws of the Empire, and with reſpect to which, the former cuſtoms ſeemed to ariſe from a great miſtake. At the commencement of the religious diſputes, it was the practice for a State, as ſoon as he embraced the Proteſtant perſuaſion, no longer to take part with the Catholics at the Diets, or other meetings of the States, in caſes where the two religious parties ſeceded from each other, and held ſeparate deliberations, but to give their voices with the Proteſtants. As, according to the Germanic conſtitution, therefore, the queſtion might always be propoſed at the Diet, In which party of religion a vote was to be reckoned? the religious equality of each of the votes ſeemed to be governed by that religion which the State who had given the vote profeſſed himſelf. This likewiſe ſeemed to be moſt natural, as it was formerly the cuſtom for every State to attend the Diet in perſon, and give his vote according to his own ideas of the ſubject, and his own determination. The right of ſeſſion, and a voice in the Diet, appeared then to be more annexed to the perſon of a State, than to his country; for the votes were reckoned, not according to the number of the countries, but of the perſons preſent. According to this plan, it at firſt appeared to be a principle perfectly equitable, for the votes, in the ſame manner as they were formerly reckoned on the Proteſtant ſide, as ſoon as an Elector or Prince embraced the Augſburg Confeſſion, to be reckoned on the ſide of the Catholics,

when any of the States again embraced the Catholic persuasion.

No one therefore seemed to entertain a doubt, that Wolfgang William, Count Palatine of Neuburg, in the year 1614, when he became a Catholic, could no longer be reckoned, at the Diets of the Empire and Circles, among the Protestant States, but among the Catholics. For this reason, therefore, at the Diet in 1654, when a scheme was drawn up for a visitation, consisting of five classes, each of twelve Catholic and twelve Protestant States, to relieve each other, nobody made any difficulty of reckoning Palatine-Neuburg in the second class, on the Catholic side. When the same scheme came again into deliberation in 1666, at a time when Christian Lewis, Duke of Mecklenburg, was a Catholic, likewise that Prince took his place among the Catholics (*a*); and at last, in 1685, when the Palatine House of Neuburg succeeded to the Electorate, and at the same time got the votes in the Council of Princes, of Palatine-Lautern and Palatine-Simmern, which were formerly enjoyed by Calvinists, the new Electoral House gave all its votes no longer in favour of the Catholics, but on the Protestant side.

If we examine this matter with greater attention, we shall find that the religious revolutions which took place at the beginning of the Reformation, and the changes

(*a*) Pachner de Eggensdorf's Decrees of the Empire, Vol. I. p. 182.

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changes which took place by a Sovereign going back to the Catholic religion again, eſſentially differ. In the firſt caſe, it was not merely the Sovereign himſelf who changed his religion; but different ſentiments in general had taken place throughout whole countries, which only came to their full maturity by the Sovereign's giving them his approbation. The Sovereign and the country, therefore, were of the ſame religion; and both wiſhed not to be reckoned in the Catholic party any longer. Here the caſe was totally otherwiſe: the countries were already Proteſtant, and continued ſo: they wiſhed at leaſt nothing more ardently, than to be left in the religion they had hitherto profeſſed, without moleſtation. The Sovereign alone perſonally became a Catholic—ought the whole country therefore, on this account, to ceaſe to be reckoned of the Proteſtant religion?

It was the language of ſome people now, indeed, that ſubjects were under an obligation to tread the ſame path to future happineſs which their Sovereigns pointed out (*a*); and they even ſtarted the queſtion, Whether it was juſt to judge of the religion of a country,

(*a*) The following paſſage occurs in a memorial of the Counts of Schwartzenburg, Auguſt 1647: "It is uncontrovertible, that "every State is at liberty to conduct and lead the ſubjects committed by God to his care, in the ſame way in which he hopes "to obtain ſalvation for himſelf, without being prevented by any "body; eſpecially as nothing is more fitting than that the ſubject ſhould follow his Governors, and his Lord, and embrace "their religion."—Meier's Negociations of the Peace of Weſtphalia, Vol. III. p. 346.

country, by the profession of the peasants, or that of the Sovereign? But whoever reflects coolly on the subject, has only to conceive the case of a Sovereign taking it into his head to turn Mahometan, Deist, Quaker, Mennonite*, or embracing the doctrines of any other sect he may take it in his head to give his sanction to, and obliging his subjects to follow him!

But ought not the circumstance of the votes at the Diet being annexed to the person of the States, with respect to the votes at least, to give this matter a different turn? Here likewise it is clear, that a Prince of the Germanic Empire exercises his right of session and voice at the Diet, only on account of the country he possesses. The real constitution of the Empire is an utter stranger to personalities. According to the original constitution of Germany, and that of the particular States consonant with it, it was not at all unusual for Princes first to hold a Diet in their own country, and then consult the interest of their land at the Diet of the Empire; and though, in later times, most of the Provincial States have no longer preserved such an influence in the votes at the general Diet, yet a Prince, or his Minister, even now, would hardly pretend that the vote of a Prince at the Diet is in such a sense personal, that a Prince has only to regard his own personal convenience in the exercise of it, and not the real welfare of his country. Supposing therefore that a question

* The Mennonites (so called from one *Menon Simon*, in the sixteenth century) are a sect of Anabaptists still tolerated in Holland.

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question arises at the general Diet, or at another meeting of the States, where Protestant countries have a different interest from Catholic ones, ought the voice annexed to a Protestant country to be used to promote the Catholic interest, more than that of the Protestant, merely because the Sovereign of that territory happened for his own person to be of the Catholic religion?—That would be strange indeed!

But again.—In former times, it was not unusual for Princes to attend the Diets in person: in this case it would not have been altogether proper to admit a Catholic Prince to a meeting, where the Protestant States had seceded from the Catholics to hold a particular deliberation among themselves. This might have been the reason perhaps, why the Protestant party, when the Margrave of Baden, or Count Palatine of Neuburg, turned Catholics, did not require them any more to attend their deliberations. But as the present Diet is composed entirely of Envoys, and it is not very probable that a secular State will ever attend the Diets again in person, the affair is now of a very different nature; and the only question at present is, Whether the vote annexed to a Protestant country, the Sovereign of which alone is of the Catholic religion, may not be still continued in that party to which it formerly belonged, by means of a Protestant Envoy?

With respect to an Imperial city, of a mixed religion, such as Augsburg for instance, it may easily be supposed possible for an Envoy of each religion

to give his vote alternately. In the ſame manner likewiſe, it is perfectly conſiſtent for the Biſhoprick of Oſnabruck, which, by virtue of the Treaty of Weſtphalia, is alternately governed by a Catholic and Proteſtant Biſhop, to have alternately a Catholic and Proteſtant Envoy, to deliver the vote at the Diet, as the country itſelf is of a mixed religion. But for a country which is entirely Proteſtant, and continues ſuch, where the Sovereign alone becomes a convert to the Catholic perſuaſion, to ſend a Catholic Envoy inſtead of a Proteſtant one, as before—and again, for a Proteſtant Sovereign who ſucceeds him, to ſend a Proteſtant Envoy—can never be defended upon any principle of equity.

A ſingular queſtion might ariſe reſpecting the collegiate votes in the Council of the Princes. It might happen, for inſtance, that among the Swabian Counts, a Count of Oettingen, and the owner of the Seigniory of Juſtingen, were Proteſtants, and the College of the Swabian Counts, notwithſtanding this, be reckoned Catholic, becauſe the greateſt part of the Counts were of that perſuaſion. This is certainly perfectly conſiſtent with the intention of the Peace of Weſtphalia, and founded on the words of the treaty; as the Circle of Bavaria, in the diviſion of the preſentations to the Imperial Chamber, is reckoned purely Catholic, although ſeveral of the members of it are Proteſtant States; and in the ſame manner likewiſe, the Treaty of Weſtphalia has declared ſuch Imperial cities, where the Proteſtant

religion

religion is eſtabliſhed by the magiſtrates, as Proteſtant cities, although many of the inhabitants are Catholics; and there are even convents, and other religious foundations there, of that perſuaſion.

There was no obſtacle, therefore, to the College of the Counts of Weſtphalia likewiſe being reckoned purely Proteſtant, though it had ſeveral Catholic members; neither could there be a doubt of the College of the Franconian Counts being Proteſtant, though one or more of them became Catholics, or a Proteſtant country devolved to a Catholic Sovereign. It was eſtabliſhed at the Diet, therefore, that among the collegiate votes in the Council of the Princes, the three votes of the Prelates of Swabia, and the Rhine, and the Swabian Counts, ſhould be conſidered as Catholic; and the votes of the Counts of Wetteravia, Franconia, and Weſtphalia, as Proteſtant.

However this might have been ſettled hitherto, two events occurred at preſent, which occaſioned the affair to be more particularly inquired into.

In conſequence of the change in the religion of Palatine-Neuburg, the *Directorium* of the Circle of the Upper Rhine, which had been hitherto conſidered of a mixed, was of both perſuaſions. The Biſhop of Worms was the Spiritual and Catholic, and the Count Palatine of Simmern the Secular and Proteſtant ſummoning Prince. If Palatine-Neuburg was now to be conſidered as Catholic, on account of Palatine-Simmern,

Simmern, and the busineſs of the Circle of the Upper Rhine, at the Diet, to be managed by Catholic Miniſters and Envoys, a mixed Circle would have a double *Directorium*, and both of the Catholic religion, which was perfectly unconſtitutional. This was leſs admiſſible, becauſe it might be expected that caſes would frequently occur, where both the ſummoning Princes would receive a commiſſion of execution from the ſupreme tribunals of the Empire, which, by virtue of the Treaty of Weſtphalia, ought only to be enforced by an equal number of Princes of both religions. It was propoſed, therefore, at the Diet in 1695, that another Proteſtant *Directorium* ſhould be appointed for the Circle of the Upper Rhine, inſtead of the Palatine Court. As this did not take place, Heſſe-Caſſel ſeparated itſelf entirely from that Circle of the Upper Rhine, as that Court did not conſider itſelf bound to adhere to the conſtitution of a Circle, which was properly mixed, upon any other condition than that there ſhould be an equality obſerved in the religion of the ſummoning Princes (*a*).

The other event was of greater conſequence. On the death of John III, King of Poland, June 17, 1696, Frederick Auguſtus, Elector of Saxony, was one of the competitors for the throne; and after embracing

(*a*) The particulars of the acceſſion of the Houſe of Heſſe-Caſſel again to the Circle of the Upper Rhine, in October 1733, and its ſeparation again in 1741, until it acceded again in January 1764, may be found at large in MÖSER's Conſtitution of the Circles, p. 44—50.

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bracing the Catholic religion, his wiſh was accompliſhed in 1697. On the 6th of Auguſt, however, the ſame year, he gave the Provincial States and ſubjects of his Saxon Electorate a public aſſurance, that the religion of the country ſhould remain unaltered (*a*). He declared, that the change in his religion was only a perſonal affair; and the Hereditary Prince continued at firſt a Proteſtant. All the affairs relating to religion, and the church in general, were to be tranſacted in future by the Duke of Saxe-Weiſſenfels, who was his neareſt Proteſtant relation, and by a College compoſed of Proteſtant Privy-counſellors; and there was afterwards a convention on the ſubject, February 1, and 5, 1700, between Auguſtus II, who was then King of Poland, and the Duke of Weiſſenfels.

In theſe circumſtances the queſtion aroſe, Whether the Elector of Saxony ſhould transfer his vote from the Proteſtant to the Catholic ſide, at the Diet? or whether he could remain a member of the Catholic party? and whether the Proteſtant body could continue the direction of their affairs in his hands?

It was at length agreed, on the Proteſtant ſide, that the Elector of Saxony, in a political ſenſe, notwithſtanding his having perſonally changed his religion, might continue a member of the Proteſtant party, as before; as many new Princes, in their political

(*a*) Lünig's Imperial Archives, Part. Spec. Vol. II. p. 239.

ſcal capacity, ſtill continued members of a College of Counts. It was thought therefore, upon this conſideration, and with the greateſt juſtice, that it was much better to leave every thing on its former footing, than to ſuffer the Electorate of Saxony, like Palatine-Neuburg, to go over entirely to the Catholics. The only point neceſſary to be ſettled was, that the King, as Elector of Saxony, ſhould engage always to keep only Proteſtant Miniſters at his court, and ſend only Proteſtant Envoys to the Diet of the Empire, or other meetings of the States. All this was attended with the leſs difficulty, as the Proteſtants then flattered themſelves that the Hereditary Prince would continue of their religion, and of courſe, therefore, that as ſoon as he ſucceeded to the government, every thing would be reſtored to its former ſtate.

The Catholics probably had no objection to the Proteſtant Body having a Director now, who, perſonally conſidered, was a Catholic; though perhaps they imagined that they ſhould receive greater advantages from the circumſtance than they actually did (*a*). In ſhort, the affair was ſettled as above related;

(*a*) It was at leaſt ſaid by the Court of Vienna, in 1759, "that the Proteſtant Direction being in the hands of the Elector "of Saxony, contrary to what was at firſt expected, was at"tended with very unfavourable conſequences." And again: "That the Elector of Saxony and Duke of Würtenberg con"tinuing on the ſide of the Proteſtants, was a very unfavourable "circumſtance for the Catholics."—FABER's New European State Chancery, 1761, Vol. IV. p. 251, 261.

related; and thus the way was opened for a new cuſtom, by which the inconveniences which had formerly attended theſe kinds of changes in religion might in future be avoided.

The diſpute which had ſo long ſubſiſted between Proteſtants and the Catholics, reſpecting their different Calendars, was at length ſettled at the concluſion of the ſeventeenth century. The Proteſtant Body, in conſequence of the calculation of ſome mathematicians, and particularly of a certain Profeſſor Weigels, of the Univerſity of Jena, paſſed a unanimous decree at Ratiſbon, September 30, 1699, that a new and improved Calendar ſhould be introduced with the commencement of the year 1700, in all the Proteſtant territories and Imperial cities; in which eleven days ſhould be omitted after the 18th of February, and the feaſt of Saint Matthew fixed on that day inſtead of the 7th. In this reſpect the calculation correſponded with the Gregorian Calendar in uſe among the Catholics; but in determining the feaſt of Eaſter, the Proteſtants followed a more accurate aſtronomical calculation. This was attended with one diſagreeable conſequence, that in the obſervance of the feaſt of Eaſter, though it did not happen every year, yet there was a difference of ſometimes eight days between the Catholics and Proteſtants, which continued till the year 1770, when a general Calendar was adopted throughout the Empire, and the difference wholly removed.

CHAPTER XI.

Advancement of the House of Brandenburg to the Throne of Prussia, 1701; *and the remarkable Difference in general between such States of the Empire as are in possession of Crowns, and those who are not.*

New kingdom of Prussia—The influence of this circumstance on the affairs of Germany—The number of States in possession of Crowns increased—The relation such States stand in to others, particularly with respect to their investiture, and ceremonies observed at the Diet—Difference of the relation in which the crowned heads stand with respect to their own quality, as States of the Empire—Particular quality of the King of Bohemia, which unites the Royal dignity, and that of a State of the Germanic Empire, in the same person.

THE advancement of the Electors of Saxony to the throne of Poland, and several similar promotions; such as the Prince of Orange to be King of England, and the Duke of Hanover to be Elector of Brunswick; tended in a great measure to encourage the design, which had been for some time in agitation at Berlin, of procuring a royal crown for the House of Brandenburg, especially as there was nothing further requisite for the purpose, than to change the Dutchy of Prussia, which was already independent, into a Kingdom. This was promoted by a

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treaty with the Imperial Court, in which the Houſe of Brandenburg withdrew its claims to ſome ſubſidiary arrears of the Houſe of Auſtria, and engaged to ſupply ten thouſand auxiliary troops for the war of the Spaniſh ſucceſſion. In the affairs of the Empire likewiſe, and the election of the Emperor, the Elector gave that Court reaſon to expect his ſupport: in conſequence of which, Leopold promiſed to acknowledge him in future, as King of Pruſſia. Frederick I. therefore, aſſumed the royal title, January 18, 1701; and placed the crown upon his own head, at Königſberg. He was acknowledged as Monarch, by one Power after another (though not by France, before the the Peace of Utrecht). The Teutonic Order, and the Pope, indeed, proteſted againſt it; but their proteſts were but little regarded, and the arguments they advanced were confuted in a variety of publications which appeared upon the ſubject.

A. C. 1701.

This new Crown made no alteration in the conſtitution of the Germanic Empire, becauſe the Houſe of Brandenburg not only very juſtly preſerved its former rank among the Electors, as well as in the College of the Princes, but gave a ſolemn aſſurance to obſerve the ſame with reſpect to the Emperor and the Elector of Mentz. Whether the Court of Berlin procured any influence in political affairs in general, through the idea of its perfect independence, and equality with other Royal Powers, and became of greater conſequence perhaps; whereas the Electoral

title

title conveyed an idea of a certain dependence, and inequality with those who enjoyed the title of Monarchs? is a different question. That his Majesty however might not in any respect be inferior to other Monarchs, he instituted, on the day of his coronation, the Order of the Black Eagle*; and a short time before, viz. July 11, 1700, a royal society of sciences was established at Berlin.

Upon the whole, the circumstance of the number of States who were in possession of crowns, continually increasing, could not fail of having a remarkable influence upon the constitution of the Empire. Before the Peace of Westphalia, the only Houses which were in possession of crowns, were those of Holstein and Austria, the heads of which were the Kings of Denmark and Hungary. By the Peace of Westphalia, the King of Sweden acquired an exten-

* The ensign of this Order is a cross of gold, in the shape of that of Malta, enamelled blue: in the middle of it, on one side, is a cypher of the King's name, F. R. and on each of the four angles, next the middle, is a black eagle displayed. The Knights wear this cross appendant to a broad orange-coloured ribbon, over the left shoulder, across the breast to the right hip. On the left side of their breast, a silver star is embroidered on the coat; and, in the middle of it, a black eagle, volant, with a laurel wreath in one of its talons, and in the other a thunder-bolt, with this motto, *Suum cuique.* The Sovereign is always Grand Master; and the number of Knights, exclusive of the Royal Family, limited to thirty. His late Majesty, Frederick II. instituted, in 1730, the Order of Merit; the ensign of which, is a golden star of eight rays, enamelled blue, which is worn appendant to a black ribbon edged with silver, and the motto, *Pour le Mérite.*

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ſive country in Germany, and became a perpetual State of the Empire: beſides this, the Houſe of Deux-Ponts ſucceeded to the Throne of Sweden, in 1654 (which afterwards devolved, in 1720, to a Prince of the Heſſe-Caſſel; and at laſt, in 1751, to the Houſe of Holſtein). The Elector of Saxony likewiſe was now King of Poland, and the Elector of Brandenburg King of Pruſſia: the Houſe of Auſtria was fully reſtored again to its former privileges, as a State of the Germanic Empire, in the quality of King of Bohemia; and it could eaſily be foreſeen, that the Elector of Hanover would ſucceed to the Throne of Great-Britain. To theſe may be added, the Houſe of Savoy, when it ſucceeded to the Crown of the two Sicilies, or afterwards to that of Sardinia*.

It was time, therefore, to make a diſtinction, in the diviſion of the States of Germany, between thoſe who were in poſſeſſion of a throne, and others. A diſtinction indeed was always obſerved in all theſe caſes, between the perſon of the King and that of a State of the Empire, according as buſineſs was tranſacted with them in this or the other capacity; but at the Diet, or other Aſſemblies of the States, thoſe who were at the ſame time inveſted with the royal dignity, kept their places without alteration. All judiciary inſtruments executed

* The Houſe of Savoy, by the mediation of Queen Anne, of England, at the concluſion of the Treaty of Utrecht, procured the Crown of Sicily, which was afterwards exchanged for Sardinia, in 1718, with the Houſe of Bourbon.

executed in the name of the Emperor, might be addreſſed, the ſame as before, to his Majeſty the King, as Elector or Duke of ———, &c.; but in caſes where political views were not to be avoided, or the perſonal qualities could not be diſtinguiſhed, the circumſtance of an independent Monarch being at the ſame time a State of the Germanic Empire, was ſoon attended with very important conſequences.

Thus, for inſtance, at the inveſtiture of the Electors and Princes of Germany, it had hitherto been cuſtomary for the Ambaſſador who received the inveſtiture from the Emperor, to preſent a written apology, and at the ſame time make a verbal excuſe, in the ſpeech which he made upon his knees before the Imperial Throne, for his Sovereign's not preſenting himſelf at the feet of his Imperial Majeſty in perſon. The crowned heads began to conſider this as a humiliation unbecoming their dignity: they did not chooſe that their abſence ſhould be apologized for in ſuch a manner; as it was not to be ſuppoſed that the bending of their knee to another Throne, could be expected in any circumſtances whatever. At laſt the queſtion aroſe even, Whether they could permit their Ambaſſadors to do it, without degradation of their own dignity? But if this was diſpenſed with, with reſpect to the Ambaſſadors from Monarchs, what was to be expected from the Electors, who inſiſted upon equal honours; and from the Houſes of the ancient Princes, who vied with the Electors? In ſhort, all this had probably its in-

 fluence,

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fluence, and occafioned feveral kinds of inveftiture to be dropped entirely, which has been the cafe now for a confiderable time.

The Envoys of thofe States who are not in poffeffion of the Royal dignity, have on this account been the more attentive to prevent any innovation in the ceremonies obferved at the Diet; as for inftance, not to allow Royal Envoys, whofe Principals are at the fame time States of the Empire, to take place of thofe who precede them in rank in the Council of Princes, at the table of the principal Commiffary, or that they fhould have any other diftinction. Count de Mirabelli, the Envoy from his Sardinian Majefty, who was fent fome years fince to deliver the vote of Savoy, which for fo many years had been dormant, chofe to go away again, without prefenting his credentials, rather than yield, in an affair of ceremony, to the Envoys of fo many Princes who had the right of voting before him. A particular article was inferted in the Capitulation at the election 1764, with refpect to the Electors, that no diftinction fhould be obferved between them in the obfervation of ceremonies (*a*); by which an allufion was undoubtedly made to fuch Electors as were at the fame time in poffeffion of the Royal dignity.

Befides this, there is certainly another and a great difference, whether a State of the Germanic Empire is raifed to an elective throne, where, in cafe of the demife

(*a*) Capitulation, 1764, Art. iii, § 21.

demise of the Sovereign, another King is chosen in his room (as was the case in Poland with only two Electors of Saxony, and the Elector of Saxony is now no longer included in the number of States who have Crowns); or whether a foreign Crown devolves, by accidental circumstances, to a Princely House of Germany, for a certain period, as in the cases of the Houses of Deux-Ponts* and Hesse†, with respect to the Crown of Sweden; or whether there is an hereditary and perpetual connexion, which secures the certain possession of the Crown to a Germanic House in future, as in the cases of Denmark, Hungary, Great-Britain, Prussia, and Sardinia. The case of Sweden is different from these, and the only one of

* Charles Gustavus, or Charles X, of Sweden, was the son of John Casimir, Prince Palatine of Deux-Ponts, and Catherine of Sweden, daughter of Charles IX, and sister to Gustavus Adolphus, Queen Christina's father. He ascended the throne upon Christina's abdication, and by her influence, in 1654. The States of Sweden wished her to have married him, to which neither she nor that Prince were inclined; and therefore she very wisely chose to content all parties, by publicly resigning the crown to him, at Upsal, in an Assembly of the States.

† Prince Frederick, of Hesse-Cassel, married Ulrica Eleanora, sister to Charles XII, who, upon his death, was declared Queen of Sweden. He was then hereditary Prince of Cassel, and Generalissimo of the Swedish army. In 1720, his consort resigned the crown in his favour, and the States consented to crown him. He succeeded to the Landgraviate of Hesse-Cassel 1730, and died 1751 without issue; when Adolphus Frederick, Duke of Holstein-Gottorp, was declared by the States of Sweden, successor to the throne, and the Landgraviate devolved to the brother of the deceased King, William VIII.

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of its kind; for every Sovereign of that country, as poſſeſſor of Pomerania, is a State of the Germanic Empire, ſo that the States are inſeparably connected with a foreign Power.

A circumſtance ſtill more ſingular, is that a King of Bohemia is, at the ſame time, in his royal capacity, a State of the Germanic Empire. As, according to the preſent conſtitution of all Europe, no other King, conſidered in that quality, can be dependent; and as, on the other hand, a State of an Empire conveys an inſeparable idea of dependence upon that empire of which he is a member; it ſeems almoſt a contradiction to ſay that there is a King of Bohemia, and that this ſame King is, in that capacity, a State of Germany. But in ancient times, when the public law of nations, of the middle ages, did not conſider it as an inconſiſtency for Kings to acknowledge their ſubordination to the Emperor, this might be thoroughly reconciled; and nothing is more certain, than this remnant of the cuſtoms of the middle ages, which was ſo long adhered to, and perfectly reſtored in 1708, viz. that the poſſeſſor of Bohemia is King and Elector in the ſame perſon, and in the ſame quality. We cannot conclude however, from the perfect independence of other monarchies, that the Crown of Bohemia is in other reſpects perfectly independent; notwithſtanding her Imperial Majeſty, Maria Thereſia, declared, in a reſcript ſent to the Electoral Bohemian Ambaſſadors, at the Diet,

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Diet, May 2, 1769, "that the Crown of Bohe-
"mia, by virtue of the rights of Majeſty, originally granted as its peculiar property, acknowledged no judge, and conſequently was under no obligation to juſtify its conduct to any perſon whatſoever (*a*)."

(*a*) PUTTER's Caſes of Law, Vol. II. Part IV. p. 934, § 320; p. 949, § 381.

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CHAPTER XII.

Wars in the Northern and Southern Parts of Europe, and their Influence on the Conſtitution of Germany.

1700—1705.

War in the north, and war of the Spaniſh ſucceſſion—The Empire involved only in the latter; though the northern war ſometimes extended itſelf to Germany, by which the right of entering into alliances with foreign Powers, ſeemed to be an exception to the law reſpecting the public peace—The war of the Spaniſh ſucceſſion revives the aſſociation of the Circles, as well as a propoſal to make the contingencies of the Empire perpetual in time of peace, which was not fully accompliſhed.

A. C. 1700. THE ſhort period of tranquillity which Europe enjoyed after the Treaty of Ryſwick, and the Peace concluded with the Turks at Carlowitz, January 26, 1699, could ſcarcely be reckoned, before a northern war, which threatened the moſt dreadful conſequences, broke out again the year 1700; and the affair of the Spaniſh ſucceſſion ſoon afterwards occurred, which involved the ſouthern part of Europe in the ſame calamities. In the latter of theſe wars, the Germanic Empire in general likewiſe found it neceſſary to take an active part; and although this was not the caſe with the war in the north, yet hoſtilities were more than once extended to the Germanic territories; eſpecially as the belligerent Powers of Denmark, Poland, and Sweden, were

at the same time States of the Empire, and each party had other States for its allies. CHAP. XII.

This circumstance occasioned the northern war to discover and afford a lamentable proof of an imperfection in the constitution of Germany. By virtue of the Treaty of Westphalia, every State of the Empire had the right of forming alliances, making war, and concluding peace; but, by virtue of the Public Peace, which was of more ancient date than that of Westphalia, and which that treaty confirmed, no State could commit hostilities in the country of another. But what was to be done, now that Denmark was allied with the Elector of Saxony, and Sweden, on the other side, with the Duke of Brunswick-Zelle; and when, in the course of the war between Denmark and Sweden, it so happened that the Saxon auxiliary forces, as the allies of Denmark, came to an engagement with those of Brunswick-Zelle, as the auxiliary troops of Sweden, and even committed hostilities in the Duke of Zelle's territories?—In this case, the Elector of Saxony, and the Duke of Brunswick-Zelle, were certainly not real belligerent Powers; but they committed every kind of hostility against each other, without any complaint being made, of an infringement of the public peace. Thus there appears almost a general exception, with respect to the public peace, when two foreign Powers are engaged in war with each other; and each has a State of the Empire for its ally, if the case likewise was not even at last reversed, when single States are at variance with

each

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each other, and foreign Powers take up arms in defence of this or the other party, as their ally; as in the claims of succeſſion of the Houſe of Auſtria, when the Houſe of Bavaria was ſupported by the Crown of France.

In other reſpects, during the time that the two great wars were vigorouſly proſecuted in the north and ſouth of Europe, very little alteration could be expected in the real and fundamental conſtitution of the Empire. The affair of the Spaniſh ſucceſſion, indeed, occaſioned a revival of the aſſociation of the Circles at Heidenheim, November 23, 1700, when Franconia engaged to furniſh 6000 men, and Swabia 8200; at Heilbron, where the Electoral Circle of the Rhine, Bavaria, and the Upper Rhine, acceded, though only on the footing of a defenſive league, with the reſervation of their neutrality; and at laſt, at Nordlingen, in March, 1702, where, although the Circle of Bavaria was excluded, yet the other four Circles of Franconia, Swabia, the Electoral and Upper Rhine, not only entered into an aſſociation again with the Circle of Auſtria; but ſoon afterwards acceded to the grand alliance which the Emperor Leopold had concluded, in the mean time, with the two maritime Powers, and the other States of the Empire. In conſequence of this, the Circle of Weſtphalia likewiſe, and at laſt the whole Empire, reſolved, September 30, 1702, on a war with France.

A pro-

CHAP. XII.

A proposition was made, in the deliberations concerning the new war of the Empire, that, instead of 40,000 troops, which was agreed to be raised by the ten Circles, the States should contribute three times the number, and that a standing army of a double quota should be constantly kept up, even in the time of peace. The Emperor prevented this design, as far as related to keeping a standing army in the time of peace, from being put in execution, by refusing his approbation to the resolution of the Empire. Every State however was left fully at liberty to keep a standing army in time of peace for himself; and one or two Circles, likewise, afterwards fixed their military establishment at one quota and a half, as the Circles of Franconia and Swabia, where this quota of men constitutes a sort of perpetual standing army.

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CHAPTER XIII.

Short Reign of Joseph I, 1705—1711; *and the remarkable Circumstances attending it, with respect to the Constitution of the Empire.*

Dispute with the Pope, concerning the Emperor's right of the *primæ preces*, and its exercise, without an indulgence granted for that purpose by his Holiness—The Electors of Cologne and Bavaria, and Duke of Mantua, put to the ban of the Empire—Deliberations concerning the perpetual Capitulation—Regulations concerning the introduction and conclusion of it, the article respecting proscription, and the election of a King of the Romans—Conversion of the Seigniory of Mindelheim into a Principality, in favour of the Duke of Marlborough—Other new Princes, whose endeavours to procure a seat at the Diet were fruitless—The old Princes, in that case, insist upon the increase of the number of their votes—The affair more limited in the Capitulation of the Emperor.

THE glorious, but short reign of Joseph I, during which the two wars already mentioned were uninterruptedly continued, was principally distinguished, with respect to the Germanic constitution, by a rupture with the Papal Chair, which for several centuries had been no longer expected.

Ever since the time that the Popes had begun to send their recommendations to Bishops and Chapters, for

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for canonries and other ecclesiastical benefices, which were soon converted into regular presentations, the Imperial Court likewise supported candidates for such offices, with similar recommendations, in which it was originally the custom to make use of the polite expression, "The Emperor hopes the Foundation will not "refuse him this his FIRST PETITION." This was doubtless the origin of the term, and soon afterwards the custom became a prerogative, called the RIGHT OF THE FIRST PETITION. When a Foundation scrupled to admit the Imperial *Precist*, for so the candidate recommended has been since denominated, the Emperor threatened an execution on the temporalities, or confiscation of the estates and revenues, of the Foundation; and thus, ever since the thirteenth century, it has been an Imperial prerogative, which an Emperor has the right of exercising once in every religious Foundation in the Empire.

With the origin of this prerogative, the Papal power had no concern whatever. The Emperors were not indebted to the Popes for it; they exercised it by their own power, and it became a prerogative by custom. An investiture was no more necessary for it from the Pope, than for the right of presentation to a benefice, which a founder of a church or convent has reserved for himself, or to the royal benefices, as they are called, which the Emperor has the disposal of in some particular cathedrals, as at Worms and Spires.

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In the reign of the Emperor Frederick III, to whom Germany in general is not much indebted for his care of the ecclesiastical prerogatives, it first happened that the Pope, when he presented the consecrated hat and sword, and gave the blessing, which the Emperors usually received from his Holiness; when he solemnly announced his accession to the throne, granted him an *indulgence* to exercise the RIGHT OF THE FIRST PETITION, which was always repeated afterwards at the succession of a new Emperor.

Joseph I. did not see any necessity for waiting for this indulgence; but soon after his accession to the throne, nominated a Baron Raesfeld, Precist to the chapter of Hildesheim, June 19, 1705. The Chapter received at first a prohibition from the Pope's Nuncio at Cologne, and afterwards from the Pope himself, not to admit the Precist, because his Holiness had not yet granted an indulgence to the Emperor to exercise the RIGHT OF THE FIRST PETITION.

Clement II. was so partial likewise in the affair of the Spanish succession, to the French interests, against the House of Austria, that Joseph found it necessary, at last, to bring him, by more serious measures, to another way of thinking. In the year 1708 he marched a part of his army into the Pope's dominions, and laid siege to Comacchio. Clement began to threaten with his spiritual and secular

weapons;

weapons; and wrote to Joseph in the following ſtrain: " Deſiſt from your undertakings, or we will " withhold our paternal favour, and proceed againſt " you as a rebellious ſon, by excommunicating you " from the church; and, if we find it neceſſary, with " arms. If you are not aſhamed of making an at- " tack upon the church, and even upon God him- " ſelf, and deviating from the piety of the anceſtors " of your Houſe, and particularly of the Emperor " Leopold, who was ſo devoted to the Roman See; " the ſame God who has given you an Empire, will " again deſtroy it (*a*)." But the times when the curſe of excommunication could make even Emperors tremble, were now no more. The Pope was ſoon afterwards obliged to ſubmit to terms of peace, and adopt a very different behaviour.

Upon the whole, perhaps, this was the moſt deſirable period for the Catholic part of Germany to have eſtabliſhed their eccleſiaſtical liberty, in oppoſition to the principles of the Court of Rome, upon a firmer baſis, if Joſeph had enjoyed a longer reign, and there had been no Jeſuits: but ſuch favourable proſpects as theſe ſeemed to be reſerved for Joſeph II.

As the Electors of Cologne and Bavaria, after the war of the Empire was declared againſt the Crown of

 France,

(*a*) FABER's State Chancery, Part XIII, p. 626.

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France, made a common cauſe with that Power against the Houſe of Auſtria, not only the Envoys of thoſe two Electors were expelled from the Diet in the reign of Leopold, Auguſt 28 and September 4, 1704; but when the fortune of war had ſubjected the whole country of Bavaria to the adminiſtration of the Emperor, all poſſible means were made uſe of to put the two Electors to the ban of the Empire. The other Electors gave their conſent to this, in the reign of Joſeph I, November 27, 1705; and in conſequence of this, the ban was publiſhed againſt them, Auguſt 29, 1706. Duke Charles IV, of Mantua, experienced a ſimilar fate: he had been already declared guilty of felony, by Leopold, on account of his attachment to France; and Joſeph I. put him to the ban of the Empire, June 30, 1708.

The circumſtance of theſe Princes being put to the ban of the Empire, brought that affair into diſcuſſion again, in the College of the Princes; and at laſt, in the year 1709, occaſioned a revival of the debates concerning the perpetual capitulation. A ſtipulation was now made reſpecting the introduction and concluſion of it, as well as the two important articles relative to the ban of the Empire, and election of a King of the Romans. The contents of the ſtipulation I have already mentioned (*a*); and the two

(*a*) See Page 121, concerning the ban of the Empire;—127, the capitulation at the election of an Emperor;—129, the election of a King of the Romans.

two last articles have been ever since repeated in every succeeding capitulation (*a*). CHAP. XIII.

Before the publication of the ban against the Elector of Bavaria, the Emperor had already raised the Duke of Marlborough, who had gained so much renown as commander of the English army, to the rank of Prince of the Empire, November 14, 1705. The Seigniory of Mindelheim, a part of the country which the House of Bavaria had forfeited by being put to the ban, was immediately granted to him as a Principality, by way of reward for his essential services to Germany. He was introduced with his title, and a vote, into the Council of Princes, November 22, 1705 (though all this was again put an end to, by the Peace of Baden).

On this occasion, several other new Princes again attempted to procure seats in the Council, viz. the Princes of Oetting, Schwartzburg, Lichtenstein, Nassau-Saarbruck, and Lamberg, who had all of them obtained recommendations for that purpose from the Emperor. Several of the ancient Princes insisted, in this case, upon having their Princely votes increased; as the Electoral House of Saxony, on account of the Landgraviate of Thuringia, the Margraviate of Misnia, and the Burgraviate of Magdeburg

(*a*) Capitulation, Art. iii, § 11, concerning the election of a King of the Romans; Art. xx, § 3, 4, and 5, the ban of the Empire.

BOOK IX. burg and Misnia; the Bishop of Munster, on account of the Burgraviate of Stromberg; the Duke of Würtenberg, on account of the Dutchy of Teck; the Dukes of Saxe-Zeiz and Merseburg, on account of the Bishopricks of Naumberg and Merseburg; the Duke of Saxe-Wessenfels, for the Principality of Querfurt; the Count Palatine of Sulzbach, the Duke of Brunswick, for Blankenburg; and the King of Prussia, for Mörs. The votes, however, of the above new Princes were not only rejected, but an article, which was agreed upon in the perpetual Capitulation, was inserted in the Capitulation at the next election; by which the introduction of a new vote was made still more difficult (*a*); so that, during the whole reign of the succeeding Emperor, Charles VI, the House of Lichtenstein was the only one that succeeded.

(*a*) In the Capitulation of 1711, Art i, § 5, the Emperor is obliged to admit no Prince, Count, or other person, to the Colleges of the Princes, or Counts, till he is previously duly qualified by the possession of an immediate Principality, County, or Lordship, and without being suitably assessed in the matricula of the Empire (add. cap. 1742, to be settled at the Diet): and not without his being admitted, and in connexion with a certain Circle; and even then, not before his admission is consented to by the Electoral College, as well as the College in which he is received, and even by the very bench of which he is to be a member.

BOOK X.

Seventh Period of Modern Hiſtory.

THE REIGN OF CHARLES VI.

1711—1740.

CHAP. I.

The War of the Spaniſh Succeſſion terminated by the Peace of Baden; and the further Hiſtory of the Clauſe in the Peace of Ryſwick.

Reverſion in the affair of the Spaniſh ſucceſſion, occaſioned by the change in the Engliſh Miniſtry, and death of the Dauphin of France, and the Emperor Joſeph—Though Charles VI. was elected Emperor, private articles of peace were concluded between England and France—Preliminaries ſigned at London—The Peace itſelf at Utrecht—The Emperor and Empire take no part in it; but the Emperor for himſelf at Raſtadt, and with full powers from the Empire at Baden—Freſh diſputes concerning the Treaty of Ryſwick, as the exception of the Peace of Ryſwick of 1690, was objected to in 1711; and the affair not mentioned at Utrecht—The Proteſtant States on that account renewed their remonſtrances againſt it, at the time of the Peace of Baden, but without the ſucceſs wiſhed for, till the reſtoration of every thing to its former condition was firſt acceded to in 1734.

THOUGH the war of the Spaniſh ſucceſſion was ſo fortunate in its progreſs, during the victorious reign of A.C. 171

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of Joſeph I, yet the whole affair ſuffered a ſudden and a fatal overthrow, by the Duke of Marlborough's loſing the favour, which he had hitherto enjoyed, of her Britannick Majeſty Queen Anne, and by the change which took place in the Engliſh Miniſtry, when the Whigs, which had been hitherto in power, were ſucceeded by Tories. The deaths likewiſe of the Dauphin of France, and the Emperor Joſeph, which happened a few days after each other, April 14 and 17, 1711, totally changed the apprehenſion concerning the ſucceſſion to the Spaniſh Crown, whether it would fall to the lot of the Houſe of Bourbon, or the Houſe of Auſtria. If a younger grandſon of Lewis XIV. became King of Spain, there was no reaſon to apprehend that the paternal power of the French Monarch would have any influence in future on the Crown of Spain. With reſpect to the Houſe of Auſtria, on the contrary, there was greater cauſe for apprehenſion, if the whole power of Spain was now to be united to that of the Houſe of Auſtria, in the perſon of Charles VI.

Theſe political conſiderations however did not prevent Charles VI. from being unanimouſly elected Emperor; but in the affair of the Spaniſh ſucceſſion, Lewis XIV. was enabled to expect very different conditions from thoſe which he had offered to comply with, a few years before, when he was even ready to conſent to the reſtoration of Straſburg. It was ſettled, by a private negociation between the Courts

of

of Great-Britain and France, that Philip V, the grandson of Lewis XIV, ſhould ſucceed to the Crown of Spain; but that the Spaniſh Netherlands ſhould be ceded to Charles; that he ſhould have the countries in Italy he was already in poſſeſſion of; viz. Naples, Sardinia, and Milan; and that the Houſe of Savoy ſhould have Sicily. The conditions which the Crown of England, on the other hand, made for itſelf, was, that Gibraltar and Minorca ſhould be ceded to Great-Britain, together with an extenſive country in America.

On theſe conditions, the preliminaries of the Peace were firſt ſigned at London, October 8, 1711; and ſeparate treaties were ſigned, one after the other, by a Congreſs opened at Utrecht, in the month of January. Among other things, Lewis XIV. was obliged to acknowledge the Proteſtant ſucceſſion to the throne, which was now firmly eſtabliſhed in England, as well as the newly-erected kingdom of Pruſſia. The King of Pruſſia likewiſe got, by way of compenſation for the inheritance of the Houſe of Orange, which he reſigned to the King of France, the upper part of Guelderland, which was formerly in the poſſeſſion of Spain, as a part of the Spaniſh Netherlands. The peace between Great-Britain and France, as well as between France and the United Provinces, included likewiſe the Hanſe towns, and particularly the cities of Bremen and Emden. With reſpect to the affairs of Germany, it was only to be lamented that the Engliſh Miniſtry did not make the repeal of the clauſe in

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the Peace of Ryſwick, one of the conditions of the Treaty of Peace with France.

This clauſe had been already diſcuſſed again at the Diet, in 1709, when it was previouſly reſolved, at the inſtance of the Emperor, that in caſe there ſhould be a Congreſs of Peace, a deputation ſhould be appointed to attend it, in behalf of the Empire, but only conſiſting of ſix perſons: Charles VI. however would not ſubmit to the conditions which were propoſed as the baſis of the Peace of Utrecht; ſo that neither the Emperor nor Empire took any part in the treaty.

The war therefore was ſtill continued, and the French army, under the command of the Maréchal de Villars, made very ſucceſsful progreſs againſt the armies of the Emperor and Empire, commanded by Prince Eugene, of Savoy. In the year 1713, Landau and Freyburg were taken by the French. In theſe circumſtances, the commanders in chief of the armies above mentioned were commiſſioned, from their reſpective Courts, to hold a conference at Raſtadt, where, under the title of Preliminaries of Peace, all the articles were ſettled, March 4, 1714. Charles VI, therefore, was obliged to ſubmit to the conditions propoſed to him at Utrecht: France was to reſtore Breiſack and Freyburg, to the Houſe of Auſtria, and acknowledge the Ninth Electorate. In the conditions of peace, likewiſe, it was inſiſted that the Electors of Cologne and Bavaria ſhould be fully reſtored to their

respective rights, with an addition moreover in favour of the latter, that the Crown of France should not make any opposition, in case the House of Bavaria should be disposed to exchange any of its territories. CHAP. I.

As all this was negociated and concluded without the concurrence of the Empire, the Emperor pleaded as an excuse, that, in the course of the war, circumstances had not permitted him first to have recourse to the deliberations of the Empire, on the subject of the Peace. A formal Congress however was now to be held at Baden in the Ergau, September 7, 1714, A. C. 1714 in order to change the preliminaries into a definitive treaty. The Emperor then left it to the option of the States, Whether they would send a deputation of the Empire to the Congress, which was resolved upon in the year 1709, or invest him and his Envoys with full powers finally to conclude the peace himself. In the affair itself there was no alteration to be hoped for: the States therefore resolved upon the latter; and the Peace was concluded at Baden, September 7, 1714, exactly as it had been agreed upon at Rastadt, and immediately afterwards ratified by the Diet of the Empire, in the same manner as the Treaties of Nimeguen and Ryswick.

At the deliberations of the Diet concerning the ratification of the Peace of Baden, the clause of the Treaty of Ryswick, which was so exceedingly offensive, came again into discussion. When the negociations of the Diet were broken off in 1697, and at the deliberations

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deliberations, in consequence of which the war of the Empire was resolved upon against France in 1702, Germany had flattered itself that France would be easily reduced to the necessity of making an entirely different peace from that of Ryswick, or at least to repeal the clause of that treaty which was the subject of so much complaint. But the prospects of this were already very unfavourable, when the Electors, at the election of Charles VI, in the course of their conference respecting the article relative to this point in the Emperor's Capitulation, expressed very opposite opinions concerning the importance of the clause.

It was taken for granted, in the Capitulation at the election of Joseph I. as I have already mentioned*, that in the peace to be concluded with France, a condition should be made, that wherever an alteration had taken place, either in ecclesiastical or secular affairs, in the places to be ceded again to Germany, every thing should be restored to its former state, agreeably to the fundamental laws of the Empire and articles of peace. It was evident that the Treaty of Ryswick, which was concluded in 1697, could not possibly be included among the articles of peace mentioned in 1699. In the interim, between the election of Joseph I. and that of Charles VI. the articles of peace had been increased by the addition of the Treaty of Ryswick; but Germany was as much engaged in a war with France at the time of the last election, as at the time of the first. According to the whole state of

* P. 301.

of the case, therefore, nothing was more natural than that, when the above passage of the Capitulation of 1690 was literally repealed, it must have been obvious that the Treaty of Ryswick, which was afterwards concluded, could not be comprehended among the articles of peace there mentioned.

The Protestant Electors considered this observation the more necessary and just, as, on one side, the whole Protestant party refused to acknowledge the validity of the Peace of Ryswick, because the clause which was inserted in the fourth article was inconsistent with the other treaties which the Peace of Ryswick ought to have had for its basis; on the other side, the Catholic party, as well as the Imperial Court, with respect to the invalidity of the above clause, only pretended that it was an affair to be settled with the Crown of France: so that in the year 1711, when the Empire and France were again at war, the remark which was made in the conference of the Electors with the Emperor elect, was absolutely indispensable. Notwithstanding this, nothing further could be accomplished in the Capitulation of Charles VI. than the insertion, in a parenthesis, after the words "articles of peace," that "the adherents to "the Confession of Augsburg would have the Treaty "of Ryswick included in the number; and that the "Catholics, in their turn, claimed their rights of re"servation (*a*):" and this parenthesis has been continued in the Capitulation to the present day.

If

(*a*) Capitulation, Art. iv. § 12.

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If the English Miniſtry had been ſufficiently informed of the nature of this affair, it would not have been a difficult matter for them to have made it one of the conditions of the peace which was negociated by the Congreſs at Utrecht, that the clauſe annexed to the fourth article of the Peace of Ryſwick ſhould be repealed, and declared to be null and void: but as this opportunity was once neglected, it was not much to be expected that the Imperial Court would take any notice of the matter in the negociations of peace with France, at Raſtadt and Baden.

Nothing therefore remained for the Proteſtants, but for their whole body to form a common reſolution to take no part in the Treaty of Baden, as far as it did not correſpond with the Peace of Weſtphalia, reſpecting the ſtate of religion. In conſequence of this, they required that their reſolution ſhould be incorporated with the opinion or reſolution of the Empire, concerning the ratification of the Peace of Baden; or elſe that it ſhould be joined to it by means of a particular Poſtſcript, as had formerly been done with the opinion of the Empire reſpecting the ratification of the Treaty of Ryſwick itſelf. They were unable however, on this occaſion, to accompliſh any thing further than the mere mention of the circumſtance by the Elector of Mentz, when he preſented the opinion of the Empire to the principal Commiſſary.

Several remonſtrances were now made, indeed, from the Court of Great Britain to that of Verſailles; but

4 that

that Court conſtantly anſwered them with the general aſſurance that the King did not require any thing contrary to the Peace of Weſtphalia; and that the queſtion concerning the ſtate of religion in the places in Germany which had been ceded by France, was a ſubject which could only be diſcuſſed at the Diet between the Emperor and States. Thus the affair was conſtantly referred from the Court of France to that of the Emperor, and from the Emperor again to France. The buſineſs itſelf remained as it was, and afforded a new ſubject for contention therefore for both parties of religion, reſpecting the validity of the Peace of Baden, ſo far as it had not annulled the clauſe in the article of the Peace of Ryſwick; till at laſt an opinion of the Empire, February 26, 1734, contained a reſolution, that every thing ſhould be moſt faithfully (*optima fide*) reſtored to its ancient ſtate, agreeably to the articles of peace contained in the reſolution of the Empire of February 14, 1689 (which evidently excluded the Peace of Ryſwick from the rules to be obſerved for the reſtoration of every thing to its former ſtate). Ever ſince that time, therefore, the Proteſtant States have conſidered it as a matter ſettled by agreement, that the Treaty of Ryſwick, as far as concerned the particular clauſe of the fourth article, can abſolutely never be conſidered by either party of religion in the Empire as an obligatory rule.

BOOK IX.

CHAPTER II.

Religious Grievances after the Peace of Baden, until the Convention on that Subject in the Year 1720.

The suspense which Germany was in, respecting the clause in the Treaty of Ryswick, apparently removed by the Peace of Baden—The animosity in the writings and conduct towards the Protestants revived—particularly in the Palatinate, where the Calvinists were deprived of the use of their catechism, and one of their churches at Heidelberg—The Elector checked in his proceedings by the reprisals of the other party—An Imperial Commissorial decree occasions a resolute remonstrance from the Protestant Body—The apprehension of a religious war removed by a Convention, at the instance of the House of Hanover; by virtue of which every thing was first restored to the footing on which it was left by the Peace of Baden; and it was agreed to go back to the former treaties, and the rule of the definitive epoch—but this Convention was not accomplished, of course therefore its design frustrated—An illegal attempt made afterwards to establish the year 1714 as a new definitive epoch.

A. C. 1720. IN those places where the validity or invalidity of the clause in the Treaty of Ryswick could have any influence, the Catholic Clergy continued in a state of uncertainty till the Peace of Baden; a circumstance which was, in some respects perhaps, a restraint upon their conduct. But as soon as the Peace of Baden was concluded, without repealing the clause, their former scruples vanished, and they thought themselves at liberty to proceed in their encroachments.

Many

Many of the Jesuits, and others, openly declared in their writings, that there was nothing now to prevent every obstacle being laid in the way of the Protestants, and especially the Calvinists, in order to bring as many countries and people as possible back again to the bosom of the church of Rome, and—the dominion of the Jesuits. In consequence of a complaint made by the Protestant States against an abusive writing which was published in 1714 by one Rudolphus Martin Meelführer, who was lately become a Catholic, an edict was issued by the Emperor, which again prohibited both the religious parties from making use of any scurrilous and defamatory language and abuse, either in their writings or conversation: but the effects of this were by no means such as were expected. Two Jesuits, Ulsleber and Huth (*a*), who lived in the

(*a*) Paul Ulsleber, a Jesuit, was professor of canon law at Heidelberg, and held a disputation on the 30th of August, 1715, with this superscription, *Vetus et moderna ecclesiæ disciplina.* In this disputation he appealed to all the intolerant laws which had ever been made against the so-denominated Heretics; by virtue of which, he affirmed, that they ought to be branded with infamy, deprived of all offices of honour, and even punished with death; and that no orthodox believer ought to have any converse with them, much less make a heretic his friend. After this he continues, "Don't talk to me about recesses and laws of the Empire: "these may at best perhaps, in cases of absolute necessity, de- "clare the association with heretics allowable; but they cannot "infringe those divine laws, by going beyond the bounds of ne- "cessity, and admitting them to a confidential friendship, which "is attended with so much danger to the soul."—SCHAUROTH's Collection

BOOK IX. the Palatinate, and after them a man of the name of Weiſlinger, made it their particular buſineſs to write, and make uſe of the moſt violent expreſſions, againſt the Proteſtants, the ſame as before. Neither were they content with writing: there was ſcarcely a village, town, or city, throughout the Palatinate, where the public religious worſhip continued as before. Not a month elapſed, without complaints of additional grievances; and many of the Proteſtant congregations were in ſuch a ſituation, that they were ſcarcely

Collection of the Decrees of the Proteſtant Body. Ratiſbon, 1742, Vol. III. p. 779.

In the year 1722, ſeveral writings made their appearance under the following titles: FRISZ VOGEL ODER STIRB, "Eat Bird or die;" SCHÖNE RARITÄTEN, "Fine Rarities;" SCHÖNE SPIELWERK, "Fine Playwork;" SCHÖNE MURMELTHIER, "Fine Mountain Rat;" BUCEPHALUS DAS FASTNACHT-SROSS, "Bucephalus the Carnival Horſe," &c. In theſe writings, among other things, it was ſaid, that the Lutherans and Calviniſts were only tolerated, and had not the rights of citizens; but in the ſame manner as, in many places, huckſters and Jews were tolerated, only to avoid a greater evil, and becauſe they could not be all at once entirely rooted out and extirpated: and yet theſe books were printed by the permiſſion of the Epiſcopal Vicariates of Spire and Augſburg, which was affixed before the title of each of them.—SCHAUROTH, 158.

Againſt the book entitled "Eat Bird or die," the author of which, Joh. Nic. Weiſlinger, although not a Jeſuit, had devoted himſelf entirely to polemic diſputes, a decree of the Aulic Council was iſſued in 1735: yet notwithſtanding this, there was a new edition of it.—SCHAUROTH, p. 1001. MÖSER'S State of Religion in Germany, p. 515.

In the year 1749, another book was publiſhed at Straſburg, with the title of *Armamentarium Catholicum perantiquæ Bibliothecæ, quæ*

ſcarcely able to get their complaints preferred to the proper courts of judicature. At laſt, the turn came to the city of Heidelberg, which had been hitherto the capital, and reſidence of the Palatine Electors. Here the Elector, in September 1719, took the principal Calviniſtical church, where only a *ſimultaneum* had been introduced before, entirely away, after he had already forbid the uſe of the Heidelberg Calviniſtical Catechiſm, April 24, 1719. Remonſtrances were made to the Elector, in vain: he turned a deaf ear to all the complaints. At laſt, ſome of the Pro-

CHAP. II.

 teſtant

quæ aſſervatur Argentorati in commenda ordinis Melitenſis S. Joannis Hieroſolymitani; in which the ſame Weiſlinger indulges himſelf in the moſt abuſive language againſt the Proteſtant preachers and authors. He calls them blackguards, beaſts, villains, ſenſeleſs fools, atheiſtical blockheads, raſcals fit for the gallows, &c. &c. &c.* and Luther himſelf is honoured with the moſt opprobrious name of all: and yet in the licence for publiſhing the work, granted by the magiſtracy, and printed at the beginning of the book, it was expreſsly ſaid, that they had found nothing in it at all *contrary to decency!*

* I know not whether the German language is richer in terms of abuſe than ours. I muſt confeſs my inability to give the reader any idea of the meaning of the words in the author's note. For his amuſement, therefore, and to exerciſe his ingenuity, I ſhall give the original. CANAILLE, BESTIE, SPITZBUBEN, BÄRENHAÜTER †, ELENDER HALUNK, EHRLOSE GALGENMÄSSIGE SCHELME, UNSINNIGE NARREN, ATHEOLOGISCHE BATSCHBUBEN, NACHRICHTERMÄSSIGER GALGENVOGEL, &c. and Luther a GENERALSAUHUND.—Weiſlinger, 3 vols. in fol. every page of which abounds with the moſt vulgar and abuſive language againſt Luther and his adherents, and all *cum permiſſu et approbatione ſuperiorum*.

† BÄRENHAÜTER, literally tranſlated, ſignifies a perſon covered with a bear-ſkin. It is a term of abuſe, probably derived from the ancient cuſtom of obliging a perſon charged with any heinous crime to wear a bear-ſkin on his ſhoulders by way of puniſhment.

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testant Courts threatened reprisals, and put their threats in execution; for the Elector of Brunswick suppressed the Catholic church at Zelle, November 4, 1719, and the Elector of Brandenburg the cathedral of Minden, November 28, and the convent of Hamersleben, in the Principality of Halberstadt, December 3, the same year.

This was not without its effect; for the Elector Palatine sent the keys of the church again to the ecclesiastical Council of the Calvinists at Heidelberg, April 16, 1720; and on the 16th of May, he allowed them the free use again of their Catechism, though at the same time he removed his Court from Heidelberg to Manheim. During these transactions, the Emperor issued a Commissorial decree concerning the measures adopted by the Protestant party; in consequence of which, the whole Protestant Body found themselves obliged to defend their principles and privileges; which they did in a very forcible remonstrance to the Emperor, November 16, 1720.

Matters were carried to such lengths, that a religious war was on the eve of breaking out, if George I. had not interposed, and procured a sort of Convention, by virtue of which an edict was issued from the Emperor, November 14, 1720, that the Elector should in the first place redress the religious grievances, and restore every thing to the state it was in at the time of the Peace of Baden. It was the intention afterwards to inquire into the grievances

which

which had been complained of ſince the Peace of Ryſwick, and redreſs them; and ſo further back till the Treaty of Nimeguen, and at laſt to the Treaty of Weſtphalia. This was a plan which ſeemed, in this reſpect, to have much in its favour; as, conſidering the prodigious number of religious grievances, which had accumulated one upon the other, there was much greater reaſon to hope, that they would be brought into order by obſerving ſuch a retrograde order of time, than if the whole had been indiſcriminately attacked at once. A condition however was expreſsly made, that the redreſſing of the grievances which had ariſen ſince the Treaty of Baden, ſhould be actually performed in four months after the date of this Convention; which, as it was only proviſional, ſhould otherwiſe loſe its force. CHAP. II.

An order was now indeed iſſued by the Elector Palatine, February 1, 1721, to all the principal perſons in office in the country, to comply with the Emperor's edict: ſeveral proofs likewiſe of compliance were ſent by the Elector to the Court of Vienna. But even at that Court they were acknowledged, Auguſt 22, 1722, to be inſufficient; and a Counſellor de Reck, in the ſervice of the Elector of Brunſwick, who was ſent by the Proteſtant Body to the Elector Palatine's Court, was himſelf an eye-witneſs to the contrary: but, notwithſtanding this, all the meaſures that were adopted were ineffectual.

This provisional Convention, which was proposed with the best intention, has since however suffered the most false construction; as if the Protestant Body ought to have been satisfied, if the religious grievances in the Palatinate and adjacent countries were redressed, and every thing restored to the state only, in which they were at the time of the Peace of Baden in the year 1714; as if the definitive years 1618 and 1624, established by the Treaty of Westphalia, had been totally set aside, and a new definitive epoch, viz. the year 1714, established instead. Such a deviation from the decision of a peace, which had once been purchased at so dear a rate as the Peace of Westphalia, was certainly neither the intention of the Protestant party, nor of the King of Great Britain, by whose mediation the Convention had been made. By going back first to the year 1714, and afterwards to 1697, then to 1679, and at last to 1648, there was certainly no renunciation of the definitive epoch, which was fixed upon in the Peace of Westphalia as a fundamental and perpetual rule. Besides this, the whole Convention was only provisional; for if the engagements contained therein were not fulfilled in four months from its date, it lost its force. And yet it was pretended, that no grievances were any longer to be complained of in those countries, after the definitive years 1618 and 1624, but only from 1714. This would have been neither more nor less than a justification of all the grievances complained of by the Protestants, which happened

happened previoufly to the year 1714, and abandoning the Proteftants to their fate for ever! which was certainly by no means the defign of the Convention; though even now, moft of the Catholic writers pretend that it was.

CHAP. II.

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CHAPTER III.

Dissensions concerning some particular Cases, in which the Protestant Body seceded, at the Diet, from the Catholics. 1712—1727.

Four cases, concerning which the two parties of religion at the Diet entertain a different opinion, and which occasion fresh disputes—1st, the equality of religion to be observed in a deputation of the Empire, in the affair of Toggenburg, in Swisserland; 2dly, the moderation of the assessment paid to the Empire by the city of Cologne; 3dly, the office of Grand Master of the Horse, to be conferred on the House of Hanover; 4thly, the execution of the sentence awarded by the deputation of the Empire, by virtue of which the Palatinate was to restore the Seigniory of Zwingenberg to a Protestant noble family, against which the Elector Palatine appealed to the Diet—In these cases the Catholics maintained that a secession could only be allowed in an affair of religion; and even then only when the Protestant States were unanimous: whereas each body passed a decree before, by a majority of votes, and no exception was made here, as in the Tribunals of Justice—Both parties of religion are to be considered as distinct, though all the States are not unanimous; otherwise this resource of the Protestants, against a majority of Catholic votes, would be soon destroyed—Neither is it necessary for either party to declare its opinion before the delivery of the individual votes, provided it is done before the decree is formed—The effect of the secession of one of the Religious Bodies, is produced by the incapacity of the other, of effecting any thing to its prejudice—By which, not only the Protestant Body is supported, but the tranquillity of Germany in general—The Catholics gained their point by this measure, in the year 1672, in the affair of the

the Major-Generals—A remarkable publication, which the Protestant Body acknowledged, places the whole affair in a clear point of view.

THE two religious parties ftill differed in their fentiments, on feveral occafions, concerning one of the moft important articles in the Treaty of Weftphalia; which ordered that, whenever a divifion took place at the Diet between the two religions, the point in difpute fhould only be amicably fettled; and that no refolution fhould be paffed by a majority of votes (*a*). Four cafes occurred in the reign of Charles VI, where the difputes on this fubject were carried on with unufual warmth.

In the year 1712, a difpute which arofe at the beginning of the century, in Swifferland, between the Abbot of St. Gall* and the Province of Toggenburg,

(*a*) Peace of Ofnabruck, Art. 5, § 52. Vide p. 78, &c.

* The Abbey of St. Gall is of the Benedictine order, and has very confiderable territories: the Abbot is capable of raifing an army of 12,000 men, in cafes of neceffity, being Sovereign of the whole Province, and under the protection of the Cantons of Zurich, Lucern, Schweitz, and Glacis. He is chofen by the Monks of the Abbey, and inftantly becomes a Prince of the Empire, immediately fubject to the Pope. He has no voice at the Diet; but, by virtue of the perpetual community of defence entered into with the confederate Cantons above mentioned, the Abbey was admitted as an incorporated place, and enjoys both a feat and voice at the general Meetings of the Confederacy. The adjoining Province of Toggenburg acknowledges the title of the Abbot of St. Gall as their natural Sovereign and Lord, but without violation of their rights and privileges.

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burg, ended in an open war, in which five Catholic cantons declared in favour of the Abbot, and two Protestant ones for the province. In this state of affairs, the Empire undertook a mediation, which was to be managed by a deputation of a certain number of States. When the deputies were to be appointed, the Catholics were desirous of naming a greater number of their own persuasion than Protestants, and passed a resolution on the subject, by means of a majority of votes. The Protestants protested against it, and appealed to the express order of the Treaty of Westphalia, that in all deputations from the Empire there should be an equal number of both religions. The Catholics urged that the rule was confined to deputations commissioned to transact any internal affairs of the Empire; and that other deputations, which were designed to transact foreign business out of the Empire, were not bound to observe it. In this case, the Protestants had no other resource to prevent a majority of votes being prejudicial to their interest, than unanimously to declare themselves of an opposite opinion, August 22, 1712, or, to use the language of the Treaty of Westphalia, to exercise their right of secession (*Jus eundi in partes*).

They adopted the same measure again, January 15, 1715; when an attempt was made to pass an act, by a majority of votes, for moderating the assessment of the Imperial city of Cologne, in the matricula of the Empire. The Protestants were of opinion that this ought not to be complied with, because the decline

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of trade of which that city complained, was entirely its own fault, and occasioned by the oppression of the Protestant inhabitants.

A similar occasion occurred again, in the year 1719, when it was in agitation to invent a new high office of State for the Electoral House of Hanover; because, after the Peace of Baden, the Elector of Bavaria succeeded to the office of Arch-sewer again, and the Elector Palatine reclaimed the office of Arch-treasurer. After various proposals, the office which met with most approbation, was that of Arch or Grand Master of the Horse. The Elector of Saxony however protested against it, because the office of Arch-mareschal comprehended every thing already which could be attributed to the office of Grand Master of the Horse, which was proved by the etymology of the words; as the German word MÄRE signifies a horse in general, and SCHALK a groom or servant. An office which was subject to controversy, was not what the Elector of Brunswick required; and yet the directorial Ministers of the two superior Colleges wished to put the question to the vote, and form a resolution by gaining a majority. In order to prevent this abuse in the *Directorium*, the Protestant party resolved upon secession. On this occasion, however, it did not actually take place; for the motion above mentioned was dropped entirely.

The exercise of this right was carried to the greatest length, in October, 1727, in an affair where it was debated,

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debated, Whether the Seigniory of Zwingenberg, on the river Neckar, which a Proteſtant family had been deprived of during the thirty-years war, and which was now in the poſſeſſion of a Catholic, who had been inveſted by the Elector Palatine, ſhould be reſtored, by virtue of the amneſty of the Peace of Weſtphalia, to its former owner? The Proteſtant family Göler de Ravenſburg had already obtained a legal ſentence in its favour, in the year 1651, from the deputation of the Empire, which was then appointed to inquire into the caſes of reſtitution, on account of the amneſty. In 1726 the Aulic Council paſſed a decree for this ſentence to be put in execution; and Charles VI. had even ſigned the order of execution, which was given to the Duke of Würtenburg as ſummoning Prince of the Circle of Swabia, where Zwingenberg was ſituated. The Elector Palatine wiſhed that the Catholic owner, the Count of Wieſer, ſhould take poſſeſſion of it; and for that purpoſe he appealed to the Diet. As it was not to be ſuppoſed that the Imperial Court would ſuffer the vote of the Houſe of Auſtria to be favourable to this appeal, the Proteſtants thought at firſt, that there was no occaſion to be apprehenſive of a majority of votes proving prejudicial to them; but when it came before the two ſuperior Colleges, all the Catholic votes were given, contrary to expectation, in favour of the Count of Wieſer. The Proteſtant States, in conſequence of this, when the reſolution of the Empire was going to be paſſed in the following ſeſſion, by a majority of votes, proteſted

tested against it, alledging that their collective body was of a different opinion, and could not consent to such a resolution being passed.

In all these four cases, it was a doubt with the Catholics, whether the majority of votes could lose its effect, by one party of religion differing in opinion from the other, as neither of the cases in question, properly speaking, had any concern at all with the affairs of religion: but the article of the Treaty of Westphalia, which was here the ground on which the Protestants proceeded, as I have mentioned above*, in my remarks upon the Peace, was so clearly and uncontrovertibly expressed, both in its literal contents and in the context, that not only in matters of religion, but in all cases whatsoever, where the States of the Empire could not be considered as one body, as also whenever the two parties of religion maintained a different opinion, the majority of votes should not decide the question in dispute. This expression, that the majority of votes should not decide the question in dispute, had evidently in view three different objects, of which, affairs of religion were the first; affairs where the States could not be considered as a body, the second; and a difference of opinion between the two religious parties, the third. To confine this third object to the limits of the first, would be as little consistent with sound logic, as to confound the position, that whoever has money, sense, and virtue, is happy, by saying,

* Page 86.

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ſaying, that no one is virtuous who has not money; for, according to this article of the peace, it may be aſſerted with juſt as much reaſon, that there was no right of ſeceſſion, except in affairs of religion (*a*).

It was pretended by the Catholic writers, that the particles WIE AUCH, *as alſo*, which ſo evidently diſtinguiſh the third object from the two preceding ones, were omitted in the copy of the negociations of the Peace of Weſtphalia, kept by Salvius the Swediſh Miniſter, and were afterwards admitted only by the miſtake of the Envoy from the Emperor: but granting even that there was this error of the pen in the copy kept by the Miniſter of Sweden, yet the whole hiſtory, which was the cauſe of the article being made, and all the negociations which followed on the ſubject, ſufficiently proved that the words, as they were uſed in the Peace itſelf, thoroughly correſponded with the ſpirit of the whole affair. Beſides

(*a*) The following parody upon this method of interpreting the Peace, is perhaps ſtill more illuſtrative.

In cauſis religionis omnibuſque aliis negotiis, ubi ſtatus tamquam unum corpus conſiderari nequeunt,	In rainy and all other bad weather, when the ſun does not ſhine,
Ut etiam catholicis et A. C. ſtatibus in duas partes euntibus,	As alſo, whenever we are inclined to play or dance,
Sola amicabilis compoſitio lites dirimat, non attenta votorum pluralitate.	We go into company, and don't walk out.
Ergo,	Conſequently,
Non fas eſt ire in partes,	We are not allowed to play or dance,
Niſi in cauſis religionis.	Except in rainy weather.

Befides this, it would be carrying the point a great deal too far, if an article of the Peace of Weftphalia could have its effect weakened by the fimple circumftance of an error of the pen, or negligence of one of the Minifters, in the courfe of the negociations. It was fufficient here, that the fenfe and fpirit of the law in queftion perfectly agreed. This article of the Peace of Weftphalia, a peace which was purchafed at fo dear a rate, would have been of very little benefit indeed, if it could only be applied in affairs of religion, which, in the ftricteft fenfe, are not very likely to occur often at the Diet; and there would be no end to difputes concerning what was actually an affair of religion or not. But how many political objects are there, on which religion has either an immediate or diftant influence? and confidering the ftate in which the two religious parties ftand towards each other in Germany, it was certainly well worth while to take care that one party fhould not overbalance the other merely by a majority of votes. The inftance of the affair of Zwingenberg alone is fufficient to convince us what the Proteftant part of the Empire might expect, if the majority of votes in favour of the Catholics could enable them to reverfe the fentence of a law-fuit which had already been pronounced in favour of a Proteftant, and decide the queftion in favour of the oppofite Catholic party.

In the affair of Zwingenberg likewife, the circumftance came into difcuffion, of all the Proteftant

States

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States not having given their votes unanimoufly; for fome of them had been prevailed upon, by the application of the Palatine Court, and the promife of meeting with fupport from that quarter on another occafion in return, which in fuch cafes is a common expedient, to fecure their votes on the Catholic fide. The queftion arofe therefore, Whether it was neceffary for that party of religion which thought proper to fecede from the other, to deliver their votes unanimoufly?

The cafe in queftion at prefent, is evidently, as was mentioned before, that the collective body of the States divided into two parts, according to their two religions; and each part, diftinct from the other, deliberated on the fubject as a feparate body, and refolved whether it fhould fecede or not. Here again the indifputable rule which prevails in every affembly of the States, according to the Germanic conftitution, viz. that every body or college has a right to form a refolution by a majority of votes, perfectly applies. Whenever a unanimity of voices is confidered as abfolutely neceffary, it is an exception to the rule, which can only be made by virtue of an exprefs prefcription in the law itfelf; as that, for inftance, in the Emperor's Capitulation, which requires the confent of the Electors for the eftablifhment of any new toll. Here it is exprefsly ordered, that this confent of the Electors muft be given unanimoufly; fo that the failure of a fingle vote of an Elector may fet the whole bufinefs afide. But no fuch

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order as this exists in the Peace of Westphalia. It is not said, that when one religious party unanimously secedes from the other; but merely when the two religious parties separate, the question in dispute shall only be decided by an amicable compromise. CHAP. III.

In another similar passage (*a*), the Peace of Westphalia ordains, that in the supreme tribunals of the Empire likewise, the majority of voices shall not avail, when the members of both religions are not of the same opinion. Here it is expressly added, "that if a single vote accedes to those of the other "party, in that case the majority shall decide the "dispute." If there could be an exception in this article, it would certainly have been made in the other, if the meaning there likewise was, to require a thorough unanimity of votes on the side of that party of religion which seceded from the other.

When two similar rules are laid down by a law for the same object, one without any limitation, and the other particularly limited, the general rule is, according to the true method of interpretation, that the limitation is alone valid, where it is expressly added; and not in that case where the law does not mention any limitation whatever. This rule of interpretation cannot at least be subject to a doubt, when such a distinction is observable between the two cases which the legislation had in view, that there appears the strongest reason why one ordinance contained a restric-

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(*a*) Peace of Osnabruck, Art. v. § 55. See page 120.

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tion, and the other none. This was the ſtate of the affair here, as in the ſupreme Tribunals of the Empire; it was either taken for granted that there was a perfect equality of perſons of both religions, as in the ſenates of the Imperial Chamber; or elſe an inconſiderable difference, as in the full council of the Chamber, and a ſmall number of perſons, whoſe unanimity was the point in queſtion. Among three or four members of a ſenate of the Chamber, or ſix Proteſtant Aulic Counſellors, the propriety may be eaſily conceived of requiring a unanimity of voices, in order to invalidate the majority of votes on the part of the whole Tribunal. But where the queſtion related to upwards of forty ſuffrages, which belong to the Proteſtant party in the College of Princes, to require a unanimity of voices here, was a very different thing. It was therefore very conſiderately ordered, that this limitation ſhould not be made, with reſpect to a diviſion of the two religious parties at the Diet.

The Catholics, it is true, pretended that the word *partes* implied two different aſſemblies; and therefore ſuppoſed that the States of the two religions, with all the Catholics on one ſide, and the Proteſtants on the other, were oppoſed to each other, and each maintained their particular opinion. This may be ſo far granted, as each party collectively proceeds to deliberation, and excludes none of its members. But that in this deliberation itſelf, a majority of votes ſhould not be valid; and that a thorough unanimity was neceſſary; that one or two members therefore of this aſſembly, by withholding their votes, could in-

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validate a Refolution of the whole; and that, in this cafe, the States of the two religions could no longer be faid to be oppofed as two parties to each other; can be maintained upon no fort of ground whatever. It might as well be afferted, that the Circle of Bavaria, for inftance, and the Circle of Swabia, when they difputed which Circle the Abbey of Kaiferfheim belonged to, ought not to have been confidered as two parties, unlefs all the votes of each of the Circles had been unanimoufly of the fame opinion; or, which is ftill more to the point, that the two religious parties in Germany were not to be confidered as two parties when the Proteftants entered into the league of Schmalkalde in the reign of Charles VI, or when they formed the union in the reign of Ferdinand II, becaufe all the Proteftant States were not complete in either of the leagues. Duke Maurice of Saxony, for inftance, was not a member of the firft; and the Houfe of Heffe-Darmftadt was not included in the other.

It cannot be difputed, that if this refource, which was granted to the Proteftants by the Peace of Weftphalia, againft the majority of the Catholic votes, when it tended to their prejudice, could only be adopted in cafes where the votes on their fide were perfectly unanimous, perhaps a cafe would feldom occur, where there was not a probability of gaining one vote or another from the oppofite party, in order to render this means of refcuing themfelves wholly abortive. In fact, however, a body or college of

States, when it has once formed a resolution in a constitutional manner, is under no necessity of giving an account to any one else, whether the resolution was formed unanimously, or by a majority of votes. No one else has any legal right to notice their proceedings; and it is sufficient, when the collective opinion is declared in the name of a whole religious party, in a constitutional manner, and in due time, to prevent the majority of votes from forming a decree.

Even when the individual votes in one of the Colleges of the States are already delivered, as in the affair of Zwingenberg, each religious party is still at liberty, as long as the Resolution is not yet actually formed with the general assent of the Assembly, to enter into a particular deliberation on the subject, and keep the protocol open if they please, in order to declare their common opinion, and by that means prevent a collegiate decree. As in every collegiate deliberation, each individual vote may be explained by additional observations, or even totally changed, before the Resolution is formed; so the same right is allowed to each of the religious parties with respect to their collective vote: and even where particular States have given their votes otherwise at first, it is only to be supposed now that they have altered their opinion, and silently acceded to the general declaration of that party of religion of which they are members.

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Each party of religion, it is true, if the circumſtances could be foreſeen, would rather previouſly determine upon a general opinion, before the votes are delivered at the Diet: but when the circumſtances are ſuch as they were in the affair of Zwingenberg, where there was no previous expectation of a prejudicial majority, it would be hard to lay any reſtrictions on the uſe of a prerogative which has no reſtriction in the manner of uſing it preſcribed in the law itſelf.

But what effect could be expected to reſult from ſuch a general declaration of opinion, and the diviſion of the two religious parties which followed? This is a queſtion which may be ſufficiently anſwered by the examples quoted above. As in every deliberation of the States, the queſtion is aſked, Whether this or the other point ſhall be granted or not? ſo the queſtion was here, for inſtance, Whether in the affair of Toggenburg, the deputation from the Empire ſhould be compoſed of an unequal number of both religions? Whether the Imperial city of Cologne ſhould be indulged with a moderation of the aſſeſſment in the matricula? Whether the office of Grand Maſter of the Horſe ſhould be obtruded on the Houſe of Hanover? and, Whether the decrees of the Deputation of the Empire, and the Aulic Council, in the affair of Zwingenberg, ſhould be deprived of their force or not? The Catholics endeavoured to decide all theſe queſtions, by a majority of votes, in favour of them-

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themselves, and carry therefore every thing before them, that seemed to suit their own interest and inclination. In opposition to this, the Protestant party declared themselves of another opinion: the attempt, therefore, to gain the point by a majority of votes failed. Nothing remained now but to settle the matter amicably; and as this could not be done, every thing was left as it was; and the question, which was expected to be carried by a majority of votes, was lost.

This, to be sure, may be represented in a very unfavourable light. It may be urged, that a small number of votes may in this manner counteract the majority, and prevent at some time or other, perhaps, some institution designed for the public good. But we must not forget the condition of the two parties of religion, considered on the whole, which is not to be judged of by the mere number of the votes, but by another standard, viz. the extent and power of the countries. When we consider the matter in this point of view, the apparent difference vanishes, although the number of the votes seems to preponderate. If we judge more according to the weight and consequence, than the mere number of the votes, we shall find, that it will be very little otherwise than if there was an equal number of votes on both sides. But supposing that among a hundred votes in the Council of the Princes, even setting religion aside, there should be fifty of one opinion and fifty of another? In this case likewise it would be impossible to form

form a Refolution; and we may imagine it to be the fame cafe with the divifion of the two parties of religion. CHAP. III.

Befides this, it makes a confiderable difference whether, when there are two parties, which in other refpects are nearly equal, one is allowed to carry a point in oppofition to the other, or adopt fuch meafures as prevent the others from accomplifhing their wifh, by which the matter is left in its former ftate. In the latter cafe, the only harm which can arife, is the prevention, in a fingle inftance perhaps, of fomething good (though this was not the cafe with the affair in queftion); and what is this, in comparifon with that ftate of dependency which one party would fall into upon the other, if they had a majority of votes always at command, to carry any queftion they thought fit to propofe? In fhort, there is no fuch great irregularity; nor does the affair, as I have ftated it, threaten fo much mifchief as many have pretended.

Confidering the fituation in which Germany actually is at prefent, this method of preventing the effect of the majority of votes, is evidently the only refource which the Proteftants have; neither can they fuffer themfelves to be deprived of it, nor reftricted in the ufe of it, without paving the way, fome time or other, for their own deftruction. Every foreign Power, to whom it is not a matter of indifference whether Germany

many preſerves its genuine conſtitution or not, cannot either be an indifferent ſpectator, when the reſource of ſo conſiderable a part of the Germanic Empire, is taken away, or the uſe of it at all reſtricted. The unfavourable light in which this matter has been viewed even on the ſide of the Catholics, has been certainly owing to the falſe repreſentations which were formerly diffuſed and encouraged by the Jeſuits. Both parties of religion however can never be happier than when they leave to each other the enjoyment of their rights in brotherly unity; and hold in the higheſt honour, and value as a real jewel, that ordinance of the Treaty of Weſtphalia which has been purchaſed at ſo dear a rate, to preſerve the peace of Germany.

After what I have already obſerved on the ſubject, there is another ſingular circumſtance which I cannot omit. Although many repreſent the uſe of this right as ſo exceedingly dangerous, and pretend that the Proteſtants may by this method perpetually deſtroy the effect of the beſt inſtitutions; yet hiſtory has evidently taught us already, with what moderation and prudence the Proteſtants have hitherto proceeded. Not a ſingle inſtance of the kind has occurred, ever ſince the time of the Peace of Weſtphalia, till the year 1712; and it is particularly deſerving of remark, that in the event which I mentioned above *, where a deliberation took place at the Diet, reſpecting the appointment

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pointment of a Major-general of the army, the Catholics themſelves were the firſt who availed themſelves of this article of the Treaty of Weſtphalia. In this caſe, likewiſe, the queſtion was not concerning religion, neither were all the votes on the Catholic ſide unanimous. The votes moreover were already ſeparately regiſtered, before the Catholic body entered into a particular deliberation on the ſubject, and afterwards declared their general opinion; by which the reſolution, which was already formed by a majority of votes, was rendered abortive; ſo that here likewiſe there was no alternative, but having recourſe to an amicable compromiſe, or elſe no officer would have been appointed. What was right therefore for the Catholic party, ought in juſtice to be equally right for the Proteſtants; ſo that the reciprocal practice of both parties, which is the beſt interpreter of law, affords a new ſolid argument to corroborate what has been before advanced upon the ſubject.

In the year 1717, when it was propoſed to moderate the aſſeſſment of the city of Cologne, a remarkable book was compoſed by ſome of the Proteſtant Envoys, to the Diet, under the metaphorical title of "The Anchor of Liberty," though it did not make its public appearance until the time of the diſpute concerning the office of Grand Maſter of the Horſe, in the year 1719. This publication proved a powerful advocate for the principles in queſtion, and defended them with great ſolidity of argu-

ment.

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ment. The Proteſtant body ſubjoined it, in the year 1720, to their remonſtrance to the Emperor; and when it was threatened with an attack, it was taken under the protection of the whole Proteſtant body, who acknowledged themſelves the authors of it.

CHAPTER

THE TANJORE ... MAHAL.

CHAPTER IV.

Fate of the Imperial Chamber, in the reign of Leopold and Charles VI.

The ordinances contained in the Treaty of Weſtphalia, and the laſt Receſs of the Empire, reſpecting the Imperial Chamber, cannot be put in execution, on account of the deficiency of the Chamber-terms—The aſſeſſors obliged, by the conflagration in the Palatinate, to quit Spire, and take refuge in Wetzlar—A Court of Juſtice eſtabliſhed at this place, which occaſions an extraordinary Viſitation—In conſequence of the report from the Viſitation, it is propoſed to increaſe the number of Aſſeſſors, and their ſalaries—The Chamber-terms raiſed from two to ſeven, to enable the Chamber to pay 25 Aſſeſſors 4000 florins each—Several accounts not ſettled; and at Berlin the Chamber-terms continued on the old footing; ſo that there could actually be no more than 17 Aſſeſſors—Whence ariſes a new evil reſpecting the Solicitors—Several of the preſentations ſupernumerary, and the perſons preſented obliged to wait for vacancies—Among the 25 Aſſeſſors, two new ones included from Bohemia and Hanover—Difficulties ariſe, on the other hand, reſpecting the preſentation from the Circle of Weſtphalia, and the alternate preſentation of the Proteſtant Circle, which were not removed till 1782.

ANOTHER diſſenſion aroſe between the two parties of religion, concerning the juriſdiction of the ſupreme Tribunals of the Empire, in the eccleſiaſtical affairs of the Proteſtants. But before I enter upon this ſubject, I muſt mention the fate which the Tri-

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bunals suffered themselves, and particularly the Imperial Chamber.

The design of the Treaty of Westphalia, and the last Recess of the Empire, to raise this supreme Tribunal to a flourishing condition, was far from being accomplished: there was such a deficiency in the Chamber-terms, that, instead of fifty, it was scarcely possible to maintain nineteen assessors. The visitation which was to have been opened in 1654, and which, since that, had been often in agitation, was equally unsuccessful; so that the laws of the Empire, which had long been made for the improvement of this court of judicature, failed in their execution.

But this was not the only unfortunate circumstance attending the Imperial Chamber. After having for many years been constantly held at Spire, it not only suffered in general, through the horrors of war, occasioned by the French army, before and after the Peace of Nimeguen; but when the flames raged through the whole Palatinate and the adjacent country, by the inhuman command of the French Minister, in the month of January, 1689, that city did not escape. All the members of the Imperial Chamber had the misfortune to see their houses, books, and papers, consumed to ashes. Most of them were under the necessity of running from the flames themselves, and thought themselves fortunate if they could save their lives. A few writings were rescued by the French, in casks, and carried to

Strasburg,

Strafburg, with the hope perhaps of difcovering fome fecret affairs of State, though their expectations failed. This however was a fortunate circumftance for many parties who had caufes depending, as they have fince been enabled to procure the writings of them from Strafburg.

The unfortunate fugitives could fcarcely find a place of refuge to affemble in. At laft it was decreed, by an act of the Empire, September 28, 1689, that the Chamber fhould be removed to the Imperial city of Wetzlar, where the firft feffion commenced January 31, 1691; though, as may be eafily conjectured, it confifted of a fmall number of Affeffors.

The Imperial Chamber met with another misfortune, by a fpirit of diffenfion prevailing among its members. Baron Ingelheim and a Count of Solms-Laubach, who were then Prefidents, difagreed, concerning the admiffion of an Affeffor prefented by the Elector of Bavaria, who, by the influence of Baron Ingelheim, was preferred to another prefented by the Emperor. The diffenfion was carried fo far, that there was a fharp altercation both in converfation and writing, among the Affeffors themfelves, which occafioned Baron Ingelheim to procure the fufpenfion of one of them, of the name of De Pyrk, by a majority of votes, January 16, 1703. The whole court, in confequence of this, was diffolved; for the members were fo enraged, that they refufed to tranfact bufinefs in council any longer.

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The Empire ſaw the neceſſity, at laſt, of eſtabliſhing a new and extraordinary Viſitation, independent of that which had been already reſolved upon in the laſt Receſs, but deferred; and of nominating an extraordinary Deputation of the Empire, expreſsly for the purpoſe. This Viſitation was decreed, October 15, 1704, but not opened till 1707. It was at firſt engaged for a conſiderable time, in examining into the defects of the Tribunal itſelf; and the Court, which was now diminiſhed to ſix Aſſeſſors, for all the reſt of them were dead, was firſt opened again January 28, 1711, and the Viſitation concluded by formal Receſs, December 13, 1713. This Receſs contained a few uſeful regulations; but, upon the whole, it was far from anſwering the general expectation which had been formed of its ſucceſs.

In the report which was afterwards made by this Viſitation to the Emperor and Empire, the neceſſity was principally urged of increaſing the number of Aſſeſſors, and enlarging their ſalaries, that they might be enabled to live in a more reſpectable manner; ſo that, inſtead of 2000 florins, their annual income ſhould be now raiſed to four*: there would then be reaſon to hope for a regular ſupply of able and reſpectable men to be preſented to the office in future. Such an increaſe of ſalary as this, naturally required a conſiderable addition to the Chamber-terms. If fifty Aſſeſſors were to be maintained, which was the number ordered by the Peace of Weſtphalia, their

* About £.450 Sterling.

their ſalaries alone annually required 200,000 florins. Such an annual contribution as this, was conſidered impoſſible: it was thought, therefore, that there could be no reaſon to complain, if the number of Aſſeſſors ordered in the Peace of Weſtphalia, were reduced to half, and the Chamber compoſed therefore of twenty-five.

In order that the buſineſs might be forwarded with greater zeal, the Chamber itſelf ſent two of its Aſſeſſors to Vienna and Ratiſbon. Upon this, a Commiſſorial decree was firſt iſſued in its favour, May 24, 1720; in conſequence of which a reſolution of the Empire was formed, December 15, 1719; and the Emperor gave his aſſent to it, November 3, 1720. It was now decreed, that twenty-five Aſſeſſors ſhould be appointed, with an annual ſalary of 4000 florins each: —That the Chamber-Judge ſhould have 11,733* rix-dollars 30 cruitzers, and each of the two Preſidents 3656† dollars, a year (*a*); beſides what was to be paid by the Empire to other perſons employed in the Court. The whole ſum, therefore, which was to be annually contributed, if the Chamber had twenty-five Aſſeſſors, amounted to 91,069 dollars 70 cruitzers. To

* £.1955 Sterling. † £.609 10*s*.

(*a*) The Emperor propoſed raiſing the ſalaries of the Chamber-Judge and Preſidents, in a Commiſſorial decree, November 3, 1720; but it was rejected in the Reſolution of the Empire, November 8, 1726, becauſe the *fundus ſurrogatorius* was not ſufficient. Collection of the Receſſes of the Empire, Vol. IV. p. 348, 361.

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To raiſe this ſum, the Chamber-terms were increaſed from two to ſeven; ſo that thoſe that paid 200 florins before, were to pay 700 in future. According to this calculation, the ſum raiſed, as it was now increaſed in the matricula, amounted to 103,600 rix-dollars, of which the proportion contributed by every Elector was rated at 811 dollars 58½ cruitzers.

In the annual contributions, as they were now rated, there ſoon appeared a deficiency of 10,484 dollars 33 cruitzers, occaſioned by ſeveral aſſeſſments not being paid, and which, it was evident, never would be paid: beſides this, ſo many States made application, to have their aſſeſſments moderated, that thoſe to which the Emperor and Empire conſented, occaſioned an annual deficiency of 20,848 dollars 50 cruitzers. When the accounts, therefore, were again ſettled, and a new matricula of the Chamber formed, inſtead of 103,600 dollars 3 cruitzers, as above ſtated, the annual contributions amounted only to 78,077 dollars 65 cruitzers.

And even here, the aſſeſſment of the Houſe of Brandenburg was rated according to the new plan; inſtead of which, the King of Pruſſia continued to pay at the old rate of two inſtead of ſeven, becauſe he had never given his conſent to this increaſe of the matricula; and alledged, that it was not a ſettled point, whether the majority of votes availed in caſes of

of taxation, or not? Besides this, there was such a number of arrears, amounting to considerable sums, which were difficult to be raised, that, when the accounts were actually settled, the whole amount was scarcely 70,000 dollars, and in many years much less. With this sum of 70,000 dollars, it was impossible to pay more than seventeen Assessors; for this number, including the other salaries, annually required 69,989 dollars 70 cruitzers. Notwithstanding the decrees of the Empire, therefore, of the years 1719 and 1720, there could only be seventeen Assessors, who were far from being equal to the work, even reckoning ten causes, upon an average, one year with another, for each of them, by which 170 might be annually decided; because the number of fresh causes which annually came before the Court, generally amounted to between 230 and 250; not to mention the innumerable quantity which had been left undecided before, and were brought forward for trial again. It might certainly be computed, therefore, that out of the 230 or 250 fresh causes, from 50 to 70 would never come to decision. On this account, those persons who had any concern in the causes depending, were particularly anxious, and laboured to the utmost of their power, to get judgment first pronounced in the causes which concerned them; and moved heaven and earth almost to obtain their end. Hence arose a new evil; for, unless those who had causes depending solicited, or, in other words, had recourse to every possible expedient, to get them speedily

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ſpeedily brought forward, they never could hope to have them decided. And what was the reſult to be expected from this, but every ſpecies of artifice, by which each party endeavoured to make their ſolicitations have more weight than the others? (*a*)*

But to return to the number of Aſſeſſors,—we find that there were ſeventeen only who actually entered on the office, and enjoyed the ſalary. The preſentations however

(*a*) In a memorial preſented by the whole body of attornies to the Imperial Chamber, in 1736, they complained that the buſineſs of Juſtice was tranſacted by ſuch perſons as were under no obligation to obey the ſtatutes of the Chamber; and that thoſe perſons made uſe of all ſorts of illicit means, &c. "Among the reſt," ſay they, "who are guilty of this, is Mordecai, the Jeweſs Bräunchin's "ſon, with many others; as the Canons of the Abbey here, the "Jeſuits, Franciſcan Monks, Phyſicians, women of all ranks, "Chriſtians, Jeweſſes, &c."—PÜTTER on the Buſineſs of Solicitors. Gottingen, 1768. p. 13.

* This is ſtill too much practiſed, owing to the imperfect ſtate of the Imperial courts of judicature. The parties concerned, frequently attend themſelves at Wetzlar, to endeavour to expedite their cauſes, and ſometimes not without ſuſpicion of illicit means. Wetzlar, in many reſpects, may be conſidered as the moſt intereſting town, for lawyers, in Germany: it is crowded with attornies, ſolicitors, ingroſſers, copyiſts, &c. not to mention the actual Aſſeſſors and expectants, beſides an infinite number of young practitioners, intended for provincial courts of juſtice. There are regular law lectures read by eminent profeſſors, the ſame as at the univerſities; and it is no uncommon thing for young gentlemen, and even noblemen, who have gone through the uſual courſe of lectures on the Roman law, ſuch as the *pandects*, *inſtitutes*, &c. and are intended for public civil offices, to reſide there ſome months, and make probationary relations of cauſes, to complete their ſtudies.

however might continue as before; for as often as one of the Aſſeſſors vacated his office, the ſame Court or Circle to which he belonged, preſented another in his place, who was admitted to make his relation of a cauſe for trial, and was regularly examined; but if there happened to be any ſenior Aſſeſſors, who had already been preſented, of the ſame religion, which was now perpetually the caſe, he who had delivered his writ of preſentation to the Chamber firſt, and was found fit for the office, ſucceeded to the vacancy; and the perſon laſt preſented was under the neceſſity of waiting till he had no ſenior of the ſame religion, and was then called to the enjoyment of his ſalary. This was a great inconvenience, becauſe many of them were obliged to wait ten, fifteen, or more years perhaps, after having made their probationary relation of a cauſe, before it came to their turn to ſucceed to an aſſeſſorſhip. On this account, many ſcrupled to accept of preſentations; or elſe, when they had an opportunity of providing for themſelves elſewhere in a more eligible manner, refuſed the office when it came to their turn.

Another difficulty aroſe, with reſpect to the number of preſentations. Among the fifty preſentations authoriſed by the Peace of Weſtphalia, fourteen were in the gift of the Electors; of courſe, according to the diviſion, made by the Reſolution of the Empire in 1719, the Electors ought to have but ſeven: but the Electoral College, in the year 1708, acquired an addition of two members, Bohemia and

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and Brunſwick; and theſe could never be excluded from the exerciſe of the privilege, which every Elector enjoyed, of preſenting Aſſeſſors. There was no other way of preſerving the proportion in the preſentations, which was agreed upon by the two parties of religion, than by dividing the number 50 exactly into half, viz. 25: and then there were two new ones to be added. The Reſolution of the Empire remedied this, by ordering that there ſhould be only half the number of Aſſeſſors fixed by the Peace of Weſtphalia; of courſe, therefore, 25. This, mathematically conſidered, was a difficult point to reconcile; that the half of fifty, including two others, ſhould make 25; which, in fact, the words of the Reſolution of the Empire deſcribed by the following almoſt inexplicable figures, 50: 2+2=25. The difficulty, however, great as it appears, is ſolved in this manner: that though there might be twenty-ſeven Aſſeſſors preſented, yet there ſhould be only twenty-five actually in office, as there might always be a ſupernumerary Catholic and Proteſtant Aſſeſſor to ſucceed as ſoon as there was an office of the ſame religion vacant; in which caſe, the Aſſeſſor newly preſented muſt wait till another vacancy offered (a regulation which was put into practice, in the Imperial Chamber, in the year 1782).

At the time I have been ſpeaking of, the preſentations of the Circle of Weſtphalia were dormant, becauſe, when the diſputes aroſe concerning the ſucceſſion of Juliers and Berg, this was likewiſe

a debated

a debated point, and had not yet been ſettled (a); ſo that the two Electoral preſentations might at firſt be reckoned inſtead of the preſentations from this Circle. CHAP. IV.

There was another preſentation ſtill remaining dormant, which was divided by the Peace of Weſtphalia alternately between the Circles of Upper and Lower Saxony, and the Proteſtant States of the four mixed Circles of Swabia, Franconia, the Upper Rhine, and Weſtphalia, in order to complete the number of the Proteſtant aſſeſſorſhips. According to the deſign of the Peace of Weſtphalia, this could make no difficulty; that the Peace had in this manner divided two preſentations, one between two Circles, and the other among four: but as the number fixed upon by the Peace of Weſtphalia, was now to be divided, it ſeemed to follow of courſe that the two Circles of Saxony ſhould only have one half of a preſentation, and the four mixed Circles the other half. This preſentation, indeed, might have been changed from two halves into an entire one, and have prevented the inequality of the preſenting Circles, by allowing the Circle of Saxony to preſent twice, and the turn to come to the mixed Circles but once. This was afterwards agreed upon, July 23, 1777: but at the time we are ſpeaking of, it was thought impracticable, and was conſidered of leſs conſequence perhaps, as the deficiency of money prevented the complete number of twenty-five Aſſeſ-

 ſors,

(a) See page 296.

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ſors, from being properly maintained; ſo that it was of little conſequence whether one more Aſſeſſor was preſented, or one leſs. There remained, therefore, in fact, only twenty-four preſentations, ſeventeen real Aſſeſſors, and ſeven ſupernumerary expectants, till a new decree of the Empire, in our own time, 1775, made an alteration again, which was firſt reduced to practice June 1, 1782.

CHAPTER

CHAPTER V.

Negociations on the Question respecting the Jurisdiction of the Supreme Tribunal of the Empire, in the Ecclesiastical Affairs of the Protestants.

The question, Whether the jurisdiction of the Imperial Chamber, in the ecclesiastical affairs of the Protestants, had any foundation? which was occasioned by a Protestant preacher being deposed at Wetzlar, discussed at the Visitation—The Religious Peace, as well as the Treaty of Westphalia, had abolished the ecclesiastical jurisdiction, as it existed before, over the Protestants, without appointing any other in its place; by which the objection which was made likewise after the Religious Peace, in the case of Protestant marriages, was destroyed—The Chamber prohibited from taking cognizance of such causes, so early as the year 1570, in which state the affair was left by the Peace of Westphalia; what was valid respecting matrimonial affairs, was valid also with respect to other objects of ecclesiastical jurisdiction—Here, likewise, the perfect equality of the two religions, requires that Protestants and Catholics should be considered in the same light with respect to Courts of judicature—It is not so great an inconsistency, according to the constitution of Germany, for Protestant States to have no superior judges in ecclesiastical affairs—The States of Germany are often judged in their own causes, by their own Tribunals, especially when the writings of the case are sent to other places for revisal—In general likewise they are exempted from appeal—Pleas for annulling the process, may be allowed in criminal cases, though there is no appeal; but this previously supposes the defendant to be subject to the Tribunals of the Empire—As little as this is the case with Catholic Bishops, in these ecclesiastical affairs, so little is it with Protestant States—

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It is argued, but without any grounds, that the Proteſtant States exerciſe an eccleſiaſtical juriſdiction, by virtue of their territorial ſovereignty—The queſtion does not ſo much depend upon the form of a Conſiſtorium, as upon the real nature and quality of the eccleſiaſtical cauſe itſelf—With the Catholics it is much worſe, becauſe the Sovereign cannot help his ſubjects when they are oppreſſed by the Spiritual Courts—If the Proteſtants allowed appeal to the Tribunals of the Empire, only in caſes of *actions en fait de nullité*, or pleas for annulling the cauſe, it would be difficult to make a certain diſtinction between ſuch complaints and others—The Proteſtant Body, therefore, very juſtly paſſed decrees upon the ſubject—Even the Aulic Council formerly did not deny theſe arguments to be valid—The Proteſtants would be material loſers thereby, and the real welfare of the Empire not at all increaſed.

JUST at the cloſe of the Viſitation of the Imperial Chamber, an affair came into diſcuſſion and occaſioned a particular inquiry, concerning which, both parties of religion have, ſeveral times ſince, maintained oppoſite opinions, and have not yet come to an agreement.

A Proteſtant Preacher at Wetzlar, of the name of Hellmund, who had held private prayer-meetings in his houſe, contrary to the orders of his ſuperiors, and would not deſiſt from the practice, was, on that account, removed from his office. In conſequence of this, he brought his action* in the Imperial Chamber, praying that the proceedings againſt him might be annulled, and his cauſe was admitted for trial.

* NICHTIGKEITSKLAGE, *action en fait de nullité*, a plea for annulling the proceedings in a law-ſuit.

trial. The Proteſtant viſitors proteſted unanimouſly againſt it; and came to a reſolution, December 19, 1713, that the Imperial Chamber had no juriſdiction in the eccleſiaſtical concerns of the Proteſtants, and could not therefore annul any of their proceedings; and the whole body of the Proteſtant States declared themſelves of the ſame opinion, February 14, 1715.

This event, as well as ſeveral others of the ſame nature, which have ſince occurred in both the ſupreme Tribunals, afforded three different ſubjects for debate: 1ſt, On the queſtion concerning the juriſdiction of the ſupreme Tribunals of the Empire, in the eccleſiaſtical affairs of the Proteſtants in general; 2dly, Whether it was not allowed, at leaſt in caſes where petition was made for the annulling of any particular ſentence? and laſtly, What legal effect a decree paſſed by the Proteſtant party alone, could have with reſpect to the Imperial Courts of Judicature?

With reſpect to the firſt point, it was maintained, on the ſide of the Proteſtants, that the Peace of Weſtphalia had equally as much, and even in plainer terms, than the Religious Peace of 1555, aboliſhed all eccleſiaſtical juriſdiction as it had formerly exiſted over the Proteſtant States and their ſubjects, but that no other had been eſtabliſhed in its room: that for this reaſon, therefore, the Proteſtant party was perfectly left to its natural libery, as it was by the Religious Peace (*a*) before.

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(*a*) Vol. I. p. 467, 471.

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The Peace of Weſtphalia likewiſe had veſted no new kind of juriſdiction in the Imperial Chamber, which it muſt certainly have done, if it began now to exerciſe a juriſdiction which originally did not belong it. It might therefore be inconteſtably aſſerted, that the Chamber could not at preſent exerciſe any juriſdiction which it was not poſſeſſed of when the Court was firſt inſtituted, nor inveſted with, ſince, by the Emperor or Empire; that with reſpect to the eccleſiaſtical juriſdiction, the caſe was exactly the ſame with the Proteſtants as with the Catholics. On the ſide of the latter, according to their hierarchical principles, no eccleſiaſtical juriſdiction of a temporal court of judicature, could be admitted, without incurring the guilt of the crime of ſacrilege (*a*); neither could any new juriſdiction of an Imperial tribunal be obtruded upon the Proteſtants without their conſent. They had great reaſon to refuſe their conſent; becauſe, if ſuch juriſdiction was allowed, they would always have a Catholic Judge in their eccleſiaſtical affairs, which was the very reverſe of one of the moſt particular ordinances which they had procured in their favour, in the Religious Peace, and in the Treaty of Weſtphalia.

In theſe two treaties of peace, with reſpect to the articles which ordered the aboliſhment of the eccleſiaſtical juriſdiction, there was a very material difference. In the Religious Peace of 1555, this aboliſhment was expreſsly confined to the religion of the Confeſſion

(*a*) Strube, Vol. II. p. 32.

Confession of Augsburg, the articles of faith, appointment of the clery, usages of the church, statutes, and ceremonies: in other concerns, the Bishops, or other Prelates, were to continue to exercise their ecclesiastical jurisdiction, as was customary in their respective districts (*a*). By virtue of this clause, the Catholic Bishops still asserted their right of jurisdiction in the matrimonial affairs of the Protestants, because this was a point which was not mentioned among those cases in which their jurisdiction over the Protestants was to be abolished: but as the Protestants could not possibly allow that they were subject, in any respect whatever, to the spiritual jurisdiction of the Catholic Bishops, they got an article drawn up in their favour, in the Treaty of Westphalia, which was much more determined and general, viz. that all diocesan rights, and the whole ecclesiastical jurisdiction of every sort and kind, without any exception whatever, over the Protestant States, should cease entirely (*b*).

In the interim, before the Treaty of Westphalia had made this decision, and as it had been long foreseen that the Bishops would not be able to maintain their usurpation of jurisdiction in the matrimonial affairs of the Protestants, it is probable that the Imperial Chamber made the experiment, to see whether the cognizance of those affairs could not be transferred to that Court. In order to put this design in execution, this supreme Tribunal first proposed the question

(*a*) Vol. I. p. 466. (*b*) Page 78.

BOOK X. question to the Emperor and Empire, in the year 1568, as a dubious point, Who was a competent judge (*a*) in the matrimonial affairs of immediate members of the Empire, who adhered to the confession of Augsburg (*b*)? When the Visitors, who were soon afterwards appointed in, 1570, observed that matrimonial affairs "were absolutely admitted "in the Chamber, whereas there was ground for its "jurisdiction in cases of that nature," it was expressly ordered, "that the Chamber should not take "cognizance of such or other concerns which did "not belong to it (*c*)." In consequence of which, this passage was inserted in the plan drawn up for the Chamber-statutes, in 1613: "The Judge and "Assessors of the Chamber are hereby ordered not "to take cognizance of matrimonial or other affairs, "which do not belong to that Court (*d*)."

Here, indeed, matrimonial affairs are only mentioned in general, without particularly saying that the question concerned the matrimonial affairs of the Protestants; but the Imperial Chamber would certainly never venture an attack on the ecclesiastical jurisdiction

(*a*) *Dubium Camerale.* 1568.

(*b*) Harprecht's Archives of the Imperial Chamber, Vol. V. Introduction, § 39, p. 27.

(*c*) Visitation Memorial. 1570. § 7, *in Corp. Jur. Cam.* p. 303, 334. Frankfort, 1724.

(*d*) Plan for the Statutes of the Imperial Chamber, Part ii. Tit. I. § 3.

jurisdiction of the Catholics. Nothing was more certain, therefore, than that the matrimonial affairs of the Protestants were the only object in view, notwithstanding the position might at at all events have been generally worded, that the Imperial Chamber could take no cognizance in any matrimonial affairs whatever.

This article has since that time never been repealed, either by the Peace of Westphalia, or any other law of the Empire; of course, therefore, it unquestionably still continues to have its legal force. The only reason why the Imperial Chamber was prohibited by the legislative power from taking cognizance in any matrimonial affairs, either of the Protestants or Catholics, was because, according to the Germanic constitution, they belonged to the ecclesiastical jurisdiction; and the Chamber was not allowed any ecclesiastical jurisdiction at all.

Whether this ecclesiastical jurisdiction, at least in the matrimonial affairs of the Protestants, could be claimed or not by the Bishops, by virtue of the above article? might indeed, in the years 1568 and 1570, be considered as a problematical question. The legislative power, therefore, might leave it to be settled at some future period. It was sufficient that the Chamber could not be allowed by its own power to assume an ecclesiastical jurisdiction, either in matrimonial affairs, or any thing else. But the position likewise, that the Bishops have no jurisdiction in the matrimonial

trimonial affairs of the Proteſtants, is now fully determined by the Peace of Weſtphalia; and ſince that time the Chamber has received no addition to its power. That Court, therefore, cannot pretend to this kind of juriſdiction; for no court of judicature whatever has a right to aſſume any juriſdiction, further than that which is conſtitutionally given to it by the ſupreme power of the nation.

As neither the matrimonial affairs of the Catholic ſecular States of the Empire, therefore, nor appeals from the Catholic ſpiritual States in eccleſiaſtical concerns, can be taken cognizance of by the Imperial Chamber, this ſupreme Tribunal has as little right to take cognizance of the matrimonial affairs of Proteſtant States, or receive appeals from their Conſiſtories, or other Courts, in eccleſiaſtical affairs. If this was not admitted, the grand principle of the Peace of Weſtphalia, which every where inculcates a perfect equality of both religions, would be counteracted, ſince what is right and law for one, is equally ſo for the other. The Chamber, upon this ground likewiſe, cannot be allowed a juriſdiction over the Proteſtant States, which it has not over the Catholics. That theſe have other eccleſiaſtical Judges over them, in their Biſhops, Archbiſhops, and the Pope, is no reaſon why the Chamber ſhould claim a juriſdiction over the Proteſtants in their ſtead. The Proteſtants are now at liberty from the power of the hierarchy, and no other has been appointed in its ſtead. That there ſhould be a ſudden revival of the ancient rights of the Emperor,

could never be thought of, I have remarked above *; partly as such a revival of ancient rights, which have not been exercised for so many centuries, could not take place according to the present constitution, without new fundamental laws of the Empire being expressly made for the purpose; and partly as the case which was now in point, where the question concerned an ecclesiastical jurisdiction over persons adhering to another religion, did not then exist.

Is a Protestant State of the Empire then, in matrimonial affairs which personally concern him, or in other matters which belong to an ecclesiastical jurisdiction, to have no Judge at all? and are those, over whom he exercises an ecclesiastical jurisdiction himself, to have no further recourse allowed them to a higher Court, when they think themselves aggrieved? Is not this an egregious and intolerable anomaly, an error and contradiction in the Germanic constitution? At the first it certainly appears to be alarming; but, dangerous as it seems, it is in fact but of little consequence.

It happens, in a variety of cases, that the States of the Germanic Empire submit to the sentences pronounced by their own tribunals, the Judges of which are with this view absolved from their oath of fealty, in such private causes where they have law-suits with their own subjects concerning their domains or their prerogatives. In the same manner Protestant States, unless

* Vol. I. p. 471.

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unleſs both parties agree to refer the matter to a third Conſiſtory or college of law, are pleaſed to ſubmit, in the eccleſiaſtical affairs which perſonally concern themſelves, to their own Conſiſtories; and this practice is the leſs to be objected to, as each party may at all events in the end requeſt that the writings of the caſe may be ſent to impartial lawyers in another country, or even to a theological and juridical faculty*.

The circumſtance, however, of the ſubjects of Proteſtant States having no appeal from the ſentence of their Sovereign to the tribunals of the Empire, is far from being the only one of its kind. It is the ſame caſe with all the ſentences pronounced by the States in criminal cauſes: and how many States are there alſo, who are exempted from appeal to the Imperial tribunals, merely in civil cauſes (*a*)! If this has been hitherto conſiſtent with the conſtitution, it is not very likely to ſuffer by appeals from the Proteſtant Conſiſtories not being received in the tribunals of the Empire, any more than from the epiſcopal or other eccleſiaſtical Courts of the Catholics.

But what was to be done in caſes where an action was brought to deſtroy the validity of the former

* It has been before obſerved, that the Profeſſors of the Univerſities in Germany are divided into faculties. The juridical faculty at Gottingen is frequently appealed to in cauſes of the utmoſt conſequence, even by the Princes of the Empire.

(*a*) See page 236.

former proceedings? as was the case with the law-suit mentioned above (*a*), where the Protestant Clergyman Hellmund(*b*) put in his plea for the proceedings against him to be annulled. There seems to be a great analogy here with other laws. Although in criminal cases no appeal can be made to the Tribunals of the Empire, yet those Courts are not restricted from admitting an action even of that nature, when a complaint is made against the validity of former proceedings. This, therefore, appears to be by no means improper in the ecclesiastical concerns of the Protestants; especially since, if this was not allowed, it would be hard to leave a person, complaining against the validity of the proceedings against him, unheard and without resource.

But we must not forget that the Protestant States of Germany, as far as they exercise a spiritual jurisdiction over their subjects, are exactly in the same predicament as the Catholic secular States, when they exercise their ecclesiastical jurisdiction in their respective dioceses. As a German Bishop represents two different persons, one as Bishop, and the other as Prince of the Empire, and as he is only subject to the supreme Tribunals in the latter quality, and not in the first, so it is likewise with the Protestant States; they are no further subject to the Imperial courts of judicature, than every secular Catholic State is. Where this

(*a*) P. 236.

(*b*) Statutes of the Chamber, 1555. Part II. Tit. 28. § 5. Plan for Statutes of the Chamber, Part II. Tit. 31. § 14.

this ſubjection of a Catholic Eccleſiaſtical State ceaſes, it ceaſes likewiſe with reſpect to a Proteſtant State, viz. in all caſes where they exerciſe thoſe rights over their ſubjects which are exerciſed by the Catholic Biſhops in their reſpective dioceſſes.

If no action for annulling a ſentence can be admitted from one, neither can it be admitted from the other. And why is not an action admitted at the Chamber, when a Catholic clergyman or ſchoolmaſter is degraded from his office by his ſpiritual ſuperiors, and puts in his plea to get the ſentence annulled? Certainly for this ſole reaſon, becauſe an eccleſiaſtical Prince is not in this reſpect ſubject to the Tribunals of the Empire: and it is exactly the ſame caſe with the Proteſtant Princes, when they likewiſe exerciſe an eccleſiaſtical juriſdiction in their countries. Granting alſo that the proceedings againſt a ſubordinate clergyman, or other ſubject, in ſpiritual affairs, were unjuſt—the Imperial Tribunals have as little to do with it, with reſpect to the Proteſtants, as in caſes of the ſame nature among Catholics, or even in the caſe of an action brought againſt the validity of the proceedings of a court of juſtice in Sileſia, a country which does not belong to the Empire.

But it is urged, that the caſe here is, that of a State of the Empire, againſt whom a complaint is made, and who, as a State, is always ſubject to the Emperor's juriſdiction. To this I anſwer, that a Biſhop of Bamberg, Würtzburg, &c. is as much a State of

Germany;

Germany; and yet the Imperial Tribunals can admit no action to invalidate the proceedings of their ecclesiastical courts of judicature, neither can they therefore interfere in the concerns of a Protestant State, as far as he exercises this ecclesiastical jurisdiction himself. Against this it has further been urged, that every State, with respect to the rights which he possesses in virtue of his territorial sovereignty, is subject to the Emperor's jurisdiction, and that the Protestant States virtually exercise their spiritual jurisdiction as a part of their territorial sovereignty; at least that this was the language of many of the Protestant writers themselves, and that even the Protestant States have frequently asserted it in their diplomas and laws, or political writings; but this assertion, whoever is the author of it, or wherever it may be found, is certainly erroneous (*a*).

Territorial sovereignty, according to the Germanic constitution, is the same throughout the Empire. There is no difference between the territorial sovereignty of ecclesiastical and secular Princes, Catholic and Protestant States, whether they are great or small, Electors or Counts; no law of the Empire attributes a greater or more comprehensive territorial sovereignty to a Protestant State, than that which is possessed by every Catholic secular State; and this power certainly does not include the spiritual jurisdiction, which is not exercised by an ecclesiastical

(*a*) See Vol. I. p. 470.

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Catholic Prince by virtue of his territorial ſovereignty, nor by a Proteſtant State any more than by a Catholic.

The rights of this kind exerciſed by the Proteſtant States, are enjoyed with the conſent of their ſubjects, and in ſuch a manner as the States have legally acquired them, and as they have been eſtabliſhed by cuſtom in the reſpective lands or territories, according to different circumſtances and different conſtitutions. It cannot be denied that in this reſpect a Proteſtant State has acquired greater rights than thoſe exerciſed by the ſecular Catholic States; and we may in this reſpect conſider them as rights of ſovereignty, becauſe they are not allowed to be exerciſed by his vaſſals and ſubjects: yet, notwithſtanding this, he does not in fact exerciſe them by virtue of his territorial ſovereignty, but by the expreſs or tacit approbation of his ſubjects. The Religious Peace laid the foundation for this, by putting an end to the ſpiritual power, as it was before exerciſed with reſpect to the Proteſtants, without appointing any other power in its ſtead; ſo that every Proteſtant State was in this reſpect left to his natural liberty.

The Germanic conſtitution affords a ſimilar example, in the right of eſtabliſhing tolls. No State of the Empire can eſtabliſh a toll by virtue of his territorial ſovereignty; but he muſt firſt procure a particular grant for that purpoſe from the Emperor, with the conſent of the Electors; and yet moſt of the States have tolls, and the owners of them conſider them as

rights

rights of sovereignty, because they certainly cannot, according to the present usage, be granted to a subject; but it cannot on this account be said, that the right of establishing tolls belongs to a State of the Empire by virtue of his territorial sovereignty; a circumstance which is nearly similar to the case of the ecclesiastical jurisdiction of the Protestant States.

In most of the Protestant countries in Germany, there is a particular Consistory appointed for the exercise of the ecclesiastical jurisdiction, and other spiritual rights of sovereignty; which is usually composed partly of spiritual and partly of secular counsellors. In this case the difference is apparently the same as between the Vicariates of government, and the Ministry of State in the Catholic ecclesiastical countries, where only the latter, and not the former, are subject to the Tribunals of the Empire. But where there is no Consistory appointed, which may be the case in one or two countries, and particularly in several Imperial cities, where the affairs of the church are managed by the ordinary government, or magistracy, here likewise the affair remains essentially the same. As a cause does not cease to be of a feudal nature, because such concerns are at present transacted in most of the territories by the Ministry, in common with other State concerns; so the ecclesiastical jurisdiction is under no restriction by the manner of its being exercised, either by means of a Consistory or otherwise, according to the particular constitution of

 the

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the different countries; but the nature of the cauſe itſelf muſt decide whether, according to the Germanic conſtitution, it is an object of eccleſiaſtical or of ſecular juriſdiction. In the caſe above, the ordinary government or magiſtracy of an Imperial city, with reſpect to eccleſiaſtical concerns, is as little ſubject to the ſupreme Tribunals of the Empire, as a Biſhop of Bamberg or Würtzburg.

If we adhere to that point of view in which the matter may be conſidered on the ſide of the Emperor and Empire, we ſhall find that this regulation in the conſtitution of the Proteſtant church is in fact not ſo exceptionable as that among the Catholics. If a Catholic ſecular State, for inſtance, or one of his ſubjects, finds himſelf aggrieved in an eccleſiaſtical cauſe by the Tribunals of his dioceſs, not even the Emperor can afford him relief, or redreſs his grievance. However he or his ſubjects may find themſelves aggrieved, they have no reſource; but muſt reſt ſatisfied with the ſentence pronounced by the Pope's Nuncio, or immediately by the Court of Rome. A Proteſtant State, on the contrary, has this advantage, that he can keep a watchful eye over the conſtitutional proceedings of the Conſiſtory, or wherever elſe the eccleſiaſtical juriſdiction, according to the conſtitution of each country, is exerciſed; and if the States ſuppoſe, which they certainly ought to do, that the welfare of their ſubjects is not a matter of indifference, they will take care that the Conſiſtories are compoſed of ſuch men,

men, and kept in ſuch order, that juſtice may have its proper courſe in eccleſiaſtical affairs as well as others; and at all events, that ſuch parties which think themſelves aggrieved, may not be deprived of legal means of bringing their cauſes to another hearing, either by ſending the writings of the proceedings to ſome other place for reviſal, or even making immediate application to the Sovereign or his Miniſters (*a*).

Upon the whole, therefore, there is by no means ſuch miſchief to be apprehended in this affair as at firſt appears; though no action for annulling a proceſs can be admitted in the Imperial Chamber, in cauſes which concern the eccleſiaſtical affairs of the Proteſtants, any more than in thoſe of the Catholics. On the other ſide, there would ſcarcely ever be an

 end

(*a*) Thus in the year 1747, a Proteſtant Clergyman, Dr. Glaſener, of Hildeſheim, who was turned out of his living by the Proteſtant Conſiſtory of that place, in conſequence of a ſentence paſſed againſt him by the theological and juridical faculty of the Univerſity of Leipſic, for oppoſing his ſuperiors, appealed to the Aulic Council. In the year 1754 likewiſe, a Conrector, who was turned out of his office at Hamburg, appealed to the Imperial Chamber. Both theſe appeals were converted by the Imperial courts of judicature into pleas for annulling the proceedings in their ſuits. In the firſt caſe, the Proteſtant Body ſent an expreſs remonſtrance to the Emperor on the ſubject, April 4, 1750.—Schauroth's Collection of the Reſolutions of the Proteſtant Body, Vol. I. p. 706.

A fuller account of the other caſe, of the Conrector, whom the Imperial Chamber at laſt would have nothing more to do with, may be found in Pütter's Caſes of Law, B. I. Part I. p. 171, 220.

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end to the bufinefs, even if the exacteft line was drawn between appeals, and pleas for annulling the procefs. Experience has already taught us, by a variety of examples, that it is no difficult matter for an advocate to change an appeal into a plea of this nature; and many other circumftances make it of double importance, if the dependance which clergymen and fchoolmafters ought to acknowledge, on their fuperiors, and the neceffary authority which belongs to the latter, fhould be every moment interrupted by the free accefs of fuch perfons to the fupreme Tribunals of the Empire. What I have hitherto faid on the fubject, therefore, may ferve as an hiftorical juftification, that it certainly was not without reafon that the Proteftant Vifitors, and afterwards their collective body, declared it as a law, in the above-mentioned cafe of Hellmund, that a caufe of that kind could not be taken cognizance of by the Chamber, as it was an ecclefiaftical affair of the Proteftants. The queftion at laft arofe, Whether fuch a decree of the Proteftant Body could have any legal effect with refpect to the Chamber, and what that effect could be? It anfwers for itfelf, that the Proteftant Body of States could of themfelves alone prefcribe no law to the Imperial Chamber and its Affeffors. But this is not the queftion: the fubject in debate was only, What meafures were to be adopted, when a queftion arofe in which the two religious parties maintained an oppofite opinion? As in this cafe, according to the exprefs words of the Peace of Weftphalia, there can be no decifion, except by means of an amicable com-

compromise, it follows of course, that the matter must rest in an undetermined state until such a compromise takes place. In cases of this nature, therefore, the Imperial Chamber cannot, until that period, make any decision: if it did, all the ordinances of the Peace of Westphalia might be easily annihilated by contrary decisions of the Tribunals of the Empire. Granting what might certainly be expected, that the Catholic Assessors of the Chamber would answer in the affirmative such a question as this, concerning the jurisdiction in the ecclesiastical affairs of the Protestants; it might with equal right be expected, that the Protestant Assessors would maintain the validity of the declaration of the whole Protestant party, which asserted an opposite opinion, in order to prevent the point from being carried: and by so doing, they certainly could never be accused of acting contrary to the spirit of the Germanic constitution; on the contrary, if they did not do it, they would act in direct opposition to the duty incumbent on them to preserve the Peace of Westphalia, which must always be considered as the most sacred of all the fundamental laws of the Empire.

This likewise is equally applicable to Protestant Aulic Counsellors, as to the Assessors of the Imperial Chamber. As the number of the former is still considerably less, in proportion to their Catholic colleagues, than in the Imperial Chamber, they have double reason to be firm in their opposition to every thing inconsistent with the genuine constitution of

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Germany. But this need not ſo much be urged; for even a reſolution of the Aulic Council has acknowledged the juſtice of the principle on which the above arguments are founded (*a*).

The matter however is certainly of great importance, as the Proteſtants would be too great ſufferers if they were in this point ever to yield. And, on the other ſide, what would the Catholics gain, if the Imperial courts of judicature, which are not even equal to the number of cauſes which properly and unqueſtionably come under their cognizance, were to be burthened ſometimes with matrimonial concerns, and ſometimes with the complaints of ſuſpended or degraded prieſts and ſchoolmaſters, from the countries and Imperial cities in Germany which profeſs the Proteſtant religion.

(*a*) Collection of the Reſolutions of the Aulic Council, Part III. Frankfort, 1754-8, p. 206, &c.

[library stamp]

CHAPTER VI.

Sequel of the Northern War, and War of the Spanish Succession—Publication of the Ordinance called the Pragmatic Sanction—Its Influence on the public Affairs.

Sequel of the Northern war—Succession of the House of Hesse to the throne of Sweden—Cession of Bremen and Verden to the House of Hanover; Stettin, to Prussia—The King of Denmark keeps Slefwic—The reversion of Tuscany, Parma, and Placentia, granted to a Spanish Prince, in order to adjust the Spanish succession; to which the Germanic Empire is requested to give its consent, and complies—Charles VI. enacts his Pragmatic Sanction, in favour of his female issue; and the daughters of his brother Joseph renounce their right—He procures the guarantee of Spain, Great-Britain, Denmark, and Germany; but engages in a war with France, on account of the election of the King of Poland; until the guarantee of that Power is at last dearly purchased, in the preliminaries of peace—A formal treaty concluded upon those conditions—The ratification of it demanded from the Empire; but prevented by the Emperor's death—The abolition of the Ryswick Clause discussed at the commencement of the war, and resolved upon.

DURING the time that the affairs of the Empire above mentioned, and the disputes between the two religious parties were in agitation, in the reign of the Emperor Charles VI, those great events, the Northern war, and the war of the Spanish Succession, in which so many European Powers were concerned, had

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had in many reſpects a conſiderable, and not merely a temporary influence on the Germanic conſtitution.

The great revolution which was occaſioned in the northern war by the death of Charles XII. of Sweden, was in the firſt place attended with this immediate conſequence, that the line of the Houſe of Deux-Ponts, which became extinct in the perſon of Charles, ceaſed to be reckoned in the number of States who were in poſſeſſion of royal thrones; for the crown of Sweden devolved to his ſiſter; and her huſband, who was at that time Hereditary Prince of Heſſe Caſſel, ſucceeded to the government as Landgrave in 1730. During his life, therefore, the Houſe of Heſſe enjoyed the honour of being one of the States of Germany in poſſeſſion of a crown *.

Among the articles of peace which Sweden was afterwards obliged to ſubmit to, there was one which had a laſting influence on the ſtate of Germany. This was the ceſſion of the Dutchies of Bremen and Verden to the Elector of Brunſwick, and the city of Stettin, with all the lands between the rivers Oder and the Peene, as well as the cities of Dam and Golnau, and the iſlands of Wollin and Uſedom, to the King of Pruſſia. Conditions were made likewiſe in the peace with the King of Sweden, by Denmark, that the city of Wiſmar ſhould not again be fortified; that Sweden ſhould not diſturb Denmark in the poſſeſſion of the Dutchy of Sleſwic, nor afford any aſſiſtance

* See p. 390.

assistance for that purpose to the House of Holstein-Gottorp.

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In the extraordinary change which the affair of the Spanish Succession experienced by the Peace of Baden, the first thing that affected the Germanic Empire was the approbation which was required of the Quadruple Alliance, August 2, 1718; by which the reversion of Tuscany, Parma, and Placentia, was granted, in order to accommodate the claims that were made by Queen Elizabeth of Spain, who was born a Princess of Parma, and procure a residence for her son Don Carlos in Italy. The Germanic Empire had less reason to make a difficulty of acceding to this reversion, because it was making a public declaration to all Europe, that the Italian States here mentioned still appertained to the Germanic Empire; in support of which, there was otherwise but very little evidence.

Of all the events in connexion with the affair of the Spanish Succession, as well as all the important affairs which occurred at this period, Charles VI. had nothing so much at heart as the PRAGMATIC SANCTION, which he enacted April 19, 1713, to settle the future succession in his hereditary dominions and government. Charles was now the only one of the male line of the House of Austria; and in this case, therefore, if he left any issue, he might consider himself as the founder of a new House. At that time, likewise, he had no issue which could plead any

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ancient laws or customs of the House in their favour, or assert any right with respect to the order of succession. There could not therefore be any obstacle to prevent his favourite design, of making an Ordinance for the right of primogeniture to be strictly observed, not only in the male line, but, in case of extinction, among his female offspring. The only circumstance which seemed to make this affair the least doubtful of success was, whether this Pragmatic Sanction, in case he left only daughters, and no male issue, could be any rule, with respect to future successions, for his female collateral relations, as the daughters of his brother, and other female descendants of his ancestors, as much as for his own family?

This was a matter which the Emperor found of greater importance every year, especially as his consort, Elizabeth Christina, a Princess of Brunswick-Blankenburg, whom he married in the year 1708, after having one son, April 13, 1716, who died November 4, the same year, brought him only three daughters, viz. Maria Theresia in 1717, Maria Anna 1718, and Maria Amelia 1725 (*a*). There were two daughters of his elder brother the Emperor Joseph, however, still living; Maria Josepha, who was married

(*a*) When Charles VI. and his royal consort received the crown of Bohemia at Prague, in September 1723, a number of coins were struck, with this inscription, GOTT BEGLEITE DIE BÖHMISCHE KRONE MIT EINEM ERTZHERZOGLICHEN SOHNE.—" God grant an Archducal Son to the Crown of Bohemia." But the wish was not accomplished.

married in 1719 to the Electoral Prince of Saxony, afterwards King Augustus III. of Poland; and Maria Amelia, who was married to Charles Albert, then Electoral Prince of Bavaria, and afterwards the Emperor Charles VII. of Germany. The question here seemed of great importance, whether, in case of the extinction of the male line of the House of Austria, in the person of Charles VI, a daughter of Charles should have the preference in the order of succession, according to the right of primogeniture, as the last possessor, or a daughter of Joseph, who had died before, and was the eldest brother. Charles VI. was aware of this objection, and did not neglect therefore, when the Princesses the daughters of his brother Joseph were married, to oblige them to make such renunciations as suited his designs; but he could not be secured by this from the claims which might be made by other female descendants of former Princes of the House.

The Emperor thought he could not guard against these apprehensions better than by first procuring the acknowledgment of this Pragmatic Sanction from all the different countries of his hereditary dominions, as obligatory; and afterwards by procuring the guarantee of it from the whole Germanic Body, as well as from the most important Powers of Europe. No sacrifice appeared too great for an object which employed all his thoughts, and on which he had fixed his heart. Thus he effected a guarantee from Spain, by acknowledging Philip V. as the legitimate possessor

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ſeſſor of his throne, in a treaty of peace and friendſhip concluded immediately with that Sovereign, April 30, 1725; from George II, King of Great Britain, by conſenting to diſſolve the Eaſt-India Company, by which Charles had already the greateſt proſpect of increaſing his commerce in the Netherlands, March 16, 1731; and from the collective States of the Germanic Empire, by a Reſolution of the Diet, January 11, 1732. He procured the ſame likewiſe from the King of Denmark, in a defenſive league concluded by that Power with the Emperor and the Court of Ruſſia.

The greateſt obſtacle remaining which ſeemed to oppoſe the accompliſhment of his wiſhes, aroſe from the Courts of Munich and Dreſden proteſting againſt the Reſolution of the Empire, and the apprehenſion that they would be ſupported by France. But the death of Auguſtus II. King of Poland, February 1, 1733, firſt occaſioned his ſon and ſucceſſor in the Electorate, who was the conſort of the eldeſt daughter of the Emperor Joſeph, to withdraw his oppoſition, that he might not loſe the ſupport of the Courts of Vienna and Peterſburg, at the new election in Poland. By this meaſure, Auguſtus III. gained the advantage at the election over Staniſlaus Leſcinſky, who had already been oppoſed to Auguſtus II. by Charles XII. of Sweden, and ſucceeded to the throne. This circumſtance ſerved as a pretext to Lewis XV. who had in the mean time married the daughter of Staniſlaus, to break with Charles VI.; and hence aroſe even a new war of the Empire with France,

which

which was terminated by an extraordinary kind of private negociation, October 3, 1775, and very unexpected Preliminaries of peace. CHAP. VI.

By virtue of these Preliminaries, it was agreed, that although Augustus III. was to be King of Poland, yet that Stanislaus should enjoy the royal title during his life; and that, for his personal indemnification, he should have the Dutchy of Lorraine, which, after his death, should be re-united to the Crown of France: that Francis Stephen, Duke of Lorraine, who was already designed to be the husband of the Arch-dutchess Maria Theresia, should receive the Grand Dutchy of Tuscany, in exchange for his hereditary dominions, from Don Carlos; and that Don Carlos, on this consideration, should receive Naples and Sicily from the Emperor Charles. The Emperor, on the contrary, only obtained Parma and Placentia; but what he considered of greater consequence than all, was, that the King of France engaged to guarantee the Pragmatic Sanction.

Not only the approbation of these Preliminaries followed in a Resolution of the Empire, May 18, 1736, but the Diet likewise granted full powers to the Emperor, finally to conclude the peace upon these conditions: in consequence of which, the Preliminaries were changed into a formal Treaty of Peace, A. C. 1738. at Vienna, November 18, 1738; and the ratification was afterwards required from the Empire, by a Com-

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missorial decree, March 6, 1740 (*a*). This however did not take place, for the Emperor died; and the whole affair, immediately after this event, took, or at leaſt appeared to take, an entirely different turn.

This peace therefore, in certain reſpects, was the only one of its kind: at leaſt it cannot ſerve again as an example of the manner in which the Empire ought, according to the Peace of Weſtphalia, to give its conſent to pacific negociations after a war in which it has been a party concerned: neither could it be expected that, in this kind of negociation which was tranſacted ſolely between the Emperor and France, there ſhould be any idea of repealing the clauſe in the Treaty of Ryſwick. With reſpect, however, to the two religious parties among themſelves, it was enough that the Opinion of the Empire, of February 26, 1734, in which the war was reſolved upon, contained at the ſame time ſuch ſtipulations as might be conſidered as a mutual agreement to revoke the clauſe, by which it ceaſed at leaſt to be obſerved as an obligatory rule by the States among themſelves, without having any regard to France (*b*).

(*a*) Pachner de Eggenstorf's Decrees of the Empire, Part IV, p. 610.

(*b*) See page 415.

CHAPTER VII.

Legiſlative Acts of the Empire, reſpecting illicit Practices among the different Branches of Tradeſmen, and for regulating the Coinage of Germany. End of the Reign of Charles VI.

Legiſlative acts of the Empire much ſeldomer ſince the Peace of Weſtphalia—A decree paſſed at the Diet, to aboliſh the illicit practices prevailing among the various branches of tradeſmen—Suitable regulations in the ſtate of the coinage begun too late—Ordinances on that ſubject firſt enacted in 1559, when a variety of ſorts of coin were already current; ſo that dollars and groſchen were obliged to be allowed, as well as guldens and cruitzers—The preſcriptions of the laws of the Empire, reſpecting the internal worth of the coin, not obeyed—Some of the States, on that account, eſtabliſhed firſt the ſtandard of Zinna, and afterwards that of Leipſic, by treaty, with particular regulations reſpecting the current gold—In the Empire, the ſtandard of twenty-four florins eſtabliſhed—The ſtandard of Leipſic eſtabliſhed, by a reſolution of the Diet, as the ſtandard of the Empire—The Emperor Charles's reign concludes with a Commiſſorial decree, occaſioned by the invaſion of the country of Liege, by a Pruſſian army.

BEFORE I conclude the reign of the Emperor Charles VI, it ought to be remarked, that, although the legiſlative acts of the Empire had ſeldom or ever interfered in concerns which belonged to the government of the particular Germanic States, ſince the

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Peace of Weſtphalia, yet two inſtances occurred at this period, both of which were of great importance.

One of theſe legiſlative acts was occaſioned by a riot among the journeymen ſhoemakers, at Augſburg, in the year 1721. It was obvious that there were many illicit practices prevailing among the journeymen of the inferior claſſes of tradeſmen, which could not be remedied by the ordinances of any particular State. The affair was, for this reaſon, diſcuſſed in a long deliberation at the Diet; and a formal Decree of the Empire paſſed upon the ſubject, in the year 1731, which was promulgated by an Imperial edict: this edict was of conſiderable ſervice, and removed many of the prevailing evils, although the execution of it was not every where equally enforced*(*a*); and there were ſeveral other evils ſtill remaining which equally ſtood in need of a reform.

Another object of this kind, was the ſtate of the coinage. According to the juſt principles of the public law of Germany, it could not properly be ſaid that the right of coining was included in the territorial ſovereignty, but only belonged to ſuch States as enjoyed it either by virtue of a conſtitutional grant from the Emperor, or otherwiſe legally acquired it (*b*).

It

* See page 130.

(*a*) James Gottlieb Sieber on the difficulty of complying with the laws of the Empire enacted Auguſt 16, 1731, concerning the bad practices prevailing among the Guilds, or companies of Tradeſmen, in the Imperial cities.—Goſlar and Leipſic, 1771.

(*b*) Capitulation, 1663 and 1711, Art. ix, § 7.

It had already alfo been very properly ordered by the laws of the Empire, that there fhould be three or four mint-towns eftablifhed in each of the Circles(*a*), where the different States might coin their money, by means of proper officers, under the infpection of the Circle, thofe States only excepted, who had mines within their own territories; and thefe were at liberty to coin as much gold and filver as their mines produced, at their own mint-towns(*b*). All the adjacent Circles were likewife to correfpond with each other, and at leaft once a year appoint a general affay-day, to fee that none of the States abufed their privileges. Abufes of this kind had long been liable to be punifhed, by the forfeiture of the right of coining, and fufpenfion of a feat and voice at the Diet; and the law was again renewed in the Capitulation at the election of Charles VI.

But the grand and fundamental error was, that the Emperors, in former times, were too liberal in granting

(*a*) The mint-towns were to have been Würtzburg, Schwabach, Nurenberg, and Wertheim, in the Circle of Franconia; Munich, Salzburg, and Ratifbon, in Bavaria; Stutgard, Baden, Augfburg, and Tettnang, in Swabia; Fulda, Darmftadt, Hanau, and Frankfort, in the Circle of the Upper Rhine; Munfter, Cleve, Duffeldorf, Paderborn, Liege, Ofnabruck, Minden, Cologne, Aix-la-Chapelle, and Dortmund, in Weftphalia; Leipfic, Berlin, Stettin, and Saalfeld, in Upper Saxony; and Magdeburg, Bremen, Brunfwick, and Lubeck, in Lower Saxony. — MOSER's Tranfactions of the Diet, p. 1425.—MOSER on the Conftitution of the Circles, p. 740.

(*b*) Recefs, 1570, § 133. 1571, § 27.—Capitulation, 1690, Art. ix. § 2.

granting the privilege of coining; ſo that there was ſcarcely any State of the Empire who did not procure it; and then the above-mentioned ſalutary ordinances were not only far from being rigidly adhered to, but another grand failure was, that there was no general ſtandard agreed upon, for the coinage of Germany, before the year 1559.

As there was no certain ſtandard legally fixed before that period, every State of courſe mixed as much alloy in his current coin as he pleaſed; ſo that in all Europe beſides, perhaps there was not ſuch a variety of different ſorts of money, as in Germany alone. Even at preſent, the various ſorts of ſilver coin current in Germany, are far from being inconſiderable. Thoſe that are the moſt current, are known by the names of DOLLARS*, GULDENS or FLORINS,

* In the northern part of Germany, they generally reckon by dollars, groſchen, and pfennings, as the Engliſh by pounds, ſhillings, and pence. In ſome countries a dollar is only an imaginary ſum; in others, a current coin, and worth about 3*s*. 4*d*. ſterling, reckoning ſix to a pound. The name is derived from THAL, a dale or valley; becauſe the firſt rix-dollars, in German REICHS THALER (dollars of the Empire), were coined at a place called JOACHIM THAL, a mint-town in Bohemia, in the year 1519.—BERGMEUER's Antiq. Part I. p. 748. In that part of Germany which is uſually diſtinguiſhed by the name of the REICH or Empire, which generally implies the upper part or ſuperior Circles, as Auſtria, Bavaria, Franconia, Swabia, and the Upper and Lower Rhine, they reckon by GULDENS (Guilders or Florins), worth about 2*s*. 3*d*. ſterling, and CRUITZERS.

The money in general uſe in Germany, at preſent, is worth, in Dollars, good Groſchen, and Pfennings, as follows:

ACHTEHALBER

FLORINS, MARKS, COPFSTÜCKE, SEVEN-AND-TWENTY-PIECES, SEVENTEEN-PIECES, GOOD-GROSCHEN, MARIEN-GROSCHEN, BATZEN, DOUBLE-BATZEN, CRUITZERS, SEXERS, DREYERS, MATTIERS, PETERMANNICHENS, FETTMANNICHENS, SCHILLINGS, GROTES, BLAFFERTS, BLAMÜSER, WHITEFENNIGS, ALBUSES, STIVERS, &c.

Coin.	*Country.*	*Current Value.*		
		Dl.	Gr.	Pf.
ACHTEHALBER - - - -	Prussia - -	—	2	—
ALBUS - - - -	Cologne - - -	—	—	$3\frac{3}{5}$
——— - - - -	Empire - -	—	—	6^{2}
———, or WHITE PFENNING -	Hesse - - - -	—	—	9
——— DOUBLE - - -	——— - - -	—	1	6
BATZE - - - -	Franconia - -	—	—	8
BLAFFERT - - -	Cologne - -	—	4	$2\frac{2}{5}$
CAROLINE - - -	Swabia - - -	6	—	—
DOIT - - - -	Cleve - - -	—	—	$—\frac{1}{2}$
DOLLAR - - -	Empire - -	—	24	—
DUCAT - - - -	Empire - - -	2	18-20	—
DREYER - - -	——— - -	—	—	3
FETTMANNICHEN - -	Cleve - -	—	—	1
FLEDERMAUS - - -	Empire - - -	—	—	2
FLINRICK - - - -	Bremen and Verden -	—	1	4
FREDERICKS-D'OR - -	Prussia - - -	5	—	—
GOLD GULDEN - - - -	Hanover - -	2	3	—
——— - - -	Nurenberg - -	1	22	8
——— - - -	On the Rhine - -	2	1-2	—
GROSCH GOOD - - -	Saxony - - -	—	—	12
——— KAISER - - -	Empire - -	—	—	$9\frac{1}{2}$
——— MARIEN - - -	Brunswick -	—	—	8
GROSCHEL - - -	Empire - - -	—	—	$0\frac{1}{2}$
——— - - - -	Vienna - - -	—	—	2
GROT - - - -	Bremen - -	—	—	4
GULDEN - - - -	Empire - - - -	—	16	—
——— MARIEN - -	Brunswick - -	—	13	4
——— - - - - -	East Friesland - -	—	8-9	—
——— - - -	Vienna - - - -	—	15	3-4
——— current - - -	Triest - -	—	14	8
HELLER - - -	Cologne - ten make	—	—	3

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It was proposed, in the year 1550, to reduce all the money in Germany to the standard of guldens and cruitzers, reckoning sixty cruitzers to a gulden; but the States of Saxony protested against this resolution, after it had been formed by a majority of votes; and the protest was so far attended to, at the Diet of 1566, that every State was left fully at liberty to coin his

Coin.	*Country.*		*Current Value.* Dl.	Gr.	Pf.
Heller	Empire	five make	—	—	4
Kopfstuck	———		—	5	3
Cruitzer	———		—	—	3
Louis-d'or, or Pistole	———		5	—	—
Lira Corrente	Trieste		—	3	7-8
Mark Banco	Hamburg		—	11	2-6
——— current	———		—	9	1-4
———	Lubeck		—	9	1-4
Mattier	Brunswick		—	—	4
Max-dor	Bavaria		4	4-6	—
Petermannichen, Great	Empire		—	1	4
——— ——— Small	———		—	—	5¼
Pfenning	Hamburg	three make	—	—	2
———	Würtenberg		—	—	1½
Rix-dollar Banco	Hamburg		1	9	10
——— ——— current	———		1	4	6
———	Lubeck		1	4	6
Schapp	East Friesland		—	10-12	—
Schilling Banco	Hamburg		—	—	8½
——— current	———		—	—	7
———	East Friesland		—	2	8
———	Prussia		—	—	1
Schwaar	Bremen		—	—	0¼
Siebener	Austria		—	1	8
Siebzehner	———		—	4	4
Seven-and-twenty-Piece	———		—	6	6
Silver Crown	———		1	9-10	—
Stiver	Cleves		—	—	5
———	East Friesland		—	—	5½
Witte	Mecklenberg		—	—	3
———	East Friesland		—	—	0½

his filver either according to the ftandard of guldens and cruitzers, or of dollars and grofchen, reckoning twenty-four grofchen to a dollar.

With refpect to the internal worth of the filver coin, it was ordered by the ftatute of 1559, that one mark of filver fhould be coined into ten guldens, thirteen cruitzers and a half, SCHWERE GELT (heavy money); or, as it was afterwards increafed, in 1596, to twelve guldens, thirty-fix cruitzers; 1623, to thirteen guldens, thirty cruitzers; and in the year 1665, to fourteen guldens and twenty-four cruitzers: but when thofe States who had their own mines, coined their money according to this regulation, it was changed, carried out of the country, and coined again into fmall pieces of much lefs value; yet, notwithftanding this, the majority of votes always oppofed a mark of filver being coined into more guldens, or more alloy being mixed in the large pieces or heavy money.

This at laft induced the Houfes of Saxony, Brandenburg, and Brunfwick, which were in poffeffion of the moft confiderable mines, to enter into a Convention with each other, and eftablifh a ftandard for their coin among themfelves, which was firft fettled at Cloifter-Zinna, near Magdeburg, in the year 1667, and again at Leipfic, in 1690. According to the ftandard fixed upon at Zinna, a mark of filver was to be coined into fifteen guldens, forty-five cruitzers; and, according to that of Leipfic, into

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eighteen guldens, or twelve dollars; ſo that the value of the ſilver was fixed, at Leipſic, at fourteen ounces, four grains, viz. in a quantity of ſilver coin weighing ſixteen ounces, there was to be fourteen ounces $\frac{4}{18}$ fine ſilver, and one ounce $\frac{14}{18}$ copper, or other alloy.

According to the ſtandard fixed upon at Leipſic, there were to be only two different ſorts of gold coins, viz. ducats, worth four guldens, and gold guldens, worth three guldens ſilver. Sixty-ſeven ducats were to be coined out of one mark of gold, each containing twenty-three carats, eight grains, pure metal. The gold guldens to be coined from one mark, was ſeventy-two, each containing eighteen carats, ten grains, fine gold; three carats, eight grains, fine ſilver; and one carat, ſix grains of copper. This laſt ſpecies of gold was only coined, in Germany, in the dominions of George II, in ſingle, double, and pieces of four.

This ſtandard of Leipſic was ſtrictly adhered to by the Houſes above-mentioned, and ſeveral others afterwards acceded to it: it was obſerved alſo, in the commercial accounts at the fairs of Leipſic, Nurenberg, Frankfort on the Oder, and Brunſwick. In the other parts of the Empire, the value of the coin was ſo much reduced, that twenty-four guldens were made from one mark of ſilver, and a ducat valued at five guldens; according to which ſtandard, trade was principally regulated at the fair of Frankfort on the Maine.

In

In order to remedy this inequality in the value of the coin in Germany, it was at laſt reſolved, at the Diet in 1738, that the ſtandard of Leipſic ſhould be generally eſtabliſhed throughout Germany, with reſpect to the gold and large pieces of ſilver. Another Reſolution was to have been made concerning the ſmall ſilver, but the Emperor Charles VI. died; in conſequence of which, the whole buſineſs came to a ſtand, and the regulations have never been actually put in practice ſince. CHAP. VII.

The laſt Commiſſorial decree, promulgated in the Empire during the reign of this Emperor, related to a diſpute between the Court of Berlin and the Biſhop of Liege, concerning the ſovereignty of the Seigniory of Herſtall, ſituated in that Biſhoprick, and which had devolved to the Houſe of Brandenburg, as heir to the Prince of Orange. His Pruſſian Majeſty, Frederick II, who ſucceeded to the throne, May 31, 1740, ordered 1200 grenadiers and 200 dragoons A. C. 17 to march into the Biſhoprick of Liege, in the month of September the ſame year. The Biſhop commenced an action againſt him for a breach of the public peace, and ſucceeded ſo far, that the King received a dehortatory reſcript from the Emperor*. The Commiſſorial decree was couched in the following terms: " As this affair is of ſuch a nature, that it " cannot in many reſpects be otherwiſe conſidered " than as an attack upon the Empire in general, the " Emperor,

* Ein Kaiserliches Abmahnungsschreiben.

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" Emperor, after the example of his predecessors, " and without derogating from his supreme judiciary " power, could not delay consulting with the States " in a case of such great importance, and demanding " their serious opinion upon the subject, as is most " consistent with the welfare of the country, and its " fundamental laws(*b*)." The affair itself, however, was afterwards compromised, in the year 1741, and the Seigniory of Herstall ceded to the Bishop of Liege, upon pecuniary considerations (*b*).

(*a*) Pachner de Eggenstorf's Decrees of the Empire, Vol. IV. p. 649.

(*b*) Büsching's Geography, Part III. Sixth Edit. p. 844.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL.

END OF THE SECOND VOLUME.